TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 217.

WILLIAM C. CULBERTSON, PLAINTIFF IN ERROR,

vs.

THE H. WITBECK COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED MARCH 25, 1885.

therefore, send the parties back to reach the same result after delays and expense that there is no need to incur. Especially, we will not do this by reason of a mere failure to state the facts with certainty to a certain intent in particular—mere failure to exclude an infinitesimal possibility of error. This court is not bound to reverse except for substantial error, and substantial error does not exist here on this point.

A writ of error lies for some defect in substance that is not aided, amendable, or cured at common law, or by some statute of amendments or jeofails. (2 Tidd's Pr., 1136.) This court has repeatedly required amendments to be allowed below, and on this principle ought to disregard the defect here. (Robertson *v.* Cease, 97 U. S., 646; Bors *v.* Preston, 111 U. S., 263; Morgan *v.* Gay, 19 Wall., 81.)

A defendant cannot move in arrest of judgment for anything which he might have pleaded in abatement.

Why shall he be allowed to assign for error that the cause was improperly removed, when he has not resisted the removal or moved to remand?

But the court, if it should not find it possible to allow the cause to be retained on the proof here of the facts, will, on the authority of the cases above cited, remand, with leave to amend the petition for removal.

J. B. HEISKELL,
W. G. WEATHERFORD,
For Appellee.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the western district of Michigan, northern division, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, Hon. Solomon L. Withey, district judge, sitting as circuit judge, between The H. Witbeck Company, plaintiff, and William C. Culbertson, defendant, in a plea of ejectment, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the third day of September, 1885, in the year of our Lord one thousand eight hundred and eighty-four.

{ Seal of the U. S. Circuit Court, Western District of Mich., Northern Division. }

HENRY M. HINSDILL,
Clerk of the Supreme *Court of the United States.*
By W. S. HILL,
Dep. Clerk for Northern Division.

Allowed by S. L. Withey, dist. judge.

2 To the honorable the justices of the Supreme Court of the United States:

The execution of the within writ appears by the schedule hereto annexed, the answer of the judge of the circuit court of the United States for the northern division of the western district of Michigan.
Dated Sept. 3d, A. D. 1884.

{ Seal of the U. S. Circuit Court, Western District of Mich., Northern Division. }

HENRY M. HINSDILL, *Clerk.*
By W. S. HILL, *Dep. Clerk.*

[Endorsed:] No. 64. Supreme Court of the United States. Wm. C. Culbertson, pl't'ff in error, *vs.* H. Witbeck Company, def't in error. Writ of error. Filed Sept. 5, 1884. W. S. Hill, dep. clerk. John W. Stone.

3 UNITED STATES OF AMERICA, *Western District of Michigan,* } ss:

I, Henry M. Hinsdill, clerk of the circuit court of the United States of America for the northern division of the western district of Michigan, do hereby certify that the annexed is a true transcript of the files and journal entries constituting the record of the case of The H. Witbeck Company *vs.* William C. Culbertson, now remaining on file and of record in my office; that I have compared said transcript with the original record so remaining in my office, and that it is a correct transcript therefrom and of the whole of such original and is hereby transmitted in obedience to the command of the annexed writ of error.

I further certify that the assignment of errors and citation, hereto annexed, are the original assignment of errors and citation filed with me in said cause.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court this thirtieth day of September, in the year of our Lord, one thousand eight hundred and eighty-four, and of the Independence of these United States the one hundred and ninth.

{ Seal of the U. S. Circuit Court, Western District of Mich., Northern Divison. }

HENRY M. HINSDILL, *Clerk.*
By W. S. HILL, *Dep. Clerk.*

4 *Declaration in Ejectment.*

The Circuit Court for the County of Marquette.

STATE OF MICHIGAN, *County of Marquette,* } ss:

The Whitbeck Company is a corporation organized and existing under the laws of the State of Wisconsin, and as plaintiff herein, by Edward Cahill, its attorney, comes and files this its declaration as commencement of, and complains of William C. Culbertson, defendant herein, of a plea of ejectment.

For that whereas the said plaintiff, on the tenth day of February, in the year one thousand eight hundred and eighty-two, was possessed of the following real estate and premises, situate in said county of Marquette, in said State of Michigan, and being known and designated as the south half of section eight (8); the northwest quarter of the southwest quarter, the southeast quarter of the southwest quarter, and the southeast quarter of section nine (9); the south half, the south half of the northeast quarter, and the southeast quarter of the northwest quarter of section ten (10); the north half of section fifteen (15), the north half of section seventeen (17), the northeast quarter of section eighteen (18), and lots one (1) and four (4) on section eighteen (18), all being in town forty-five (45) north, of range twenty-nine (29) west; to which said lands the plaintiff claims title in fee-simple. And the said plaintiff being so possessed thereof, the

said defendant afterwards, to wit, on the tenth day of February, in said last-mentioned year, entered into said premises, claiming title thereto adverse to said plaintiff, and unlawfully withholds from said plaintiff the possession thereof, to the damage of said plaintiff one thousand dollars, and therefore he brings suit, etc.

EDWARD CAHILL,
Attorney for Plaintiff, Lansing, Mich.

5 [Endorsed:] The circuit court for the county of Marquette. The Whitbeck Company, pl'ffs, *vs.* William C. Cuthbertson, def't. Narr. Filed April 3, A. D. 1882. William Rowland, clerk.

To the within-named defendant:

Take notice that on filing a declaration in this cause, (of which the within is a true copy,) as commencement of suit, a rule was entered in the book of common rules, kept by the clerk of said court in his office, in Marquette, Mich., requiring you to appear and plead to said declaration within twenty days after service on you of a copy thereof, and notice of said rule or judgment, etc.

Yours, etc.,

EDWARD CAHILL,
Plaintiff's Attorney.

STATE OF MICHIGAN, } *ss:*
County of ——, }

I hereby certify and return that on the — day of ——, A. D. 18—, I served the declaration, of which the within is a copy, upon —— ——, the defendant named therein, by delivering to — personally a copy thereof, with the notice of rule to plead endorsed thereon as hereon endorsed.

Fees, ——.

—— ——, *Sheriff.*

STATE OF MICHIGAN, } *ss:*
County of ——, }

I hereby certify and return that on the — day of ——, A. D. 18—, I served the declaration, of which the within is a copy, upon —— ——, the defendant named therein, w— in actual occupation of the premises described therein, by delivering a copy thereof, with the notice of rule to plead endorsed thereon as hereon endorsed, to —— ——, a person of proper age, at the the dwelling house of said defendant, — being absent therefrom.

Fees, ——.

—— ——, *Sheriff.*

The plaintiff in the within-entitled cause, being a non-resident of this State, we, Jones & Poter and J. Henry Moores, of Lansing, Michigan, do hereby undertake to become security for such costs as may be awarded to the defendant against the plaintiff, and do promise and -gree to pay to said defendant all such costs as may be awarded to him in this suit against said plaintiff on taxation and demand thereof.

Dated Feb. 10th, 1882.

JONES & POTER.

6 STATE OF MICHIGAN:

The Circuit Court for the County of Marquette.

THE WHITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

Dated April 4th, A. D. 1882.

On filing declaration in this case, pursuant to the statute authorizing the commencement of suits by declaration, and on motion of Edward Cahill, attorney for the plaintiff—

It is ordered that the defendant in said cause appear and plead to the said declaration within twenty days after service upon him of a copy thereof, and notice of this rule or judgment, &c.

EDWARD CAHILL,
Plaintiff's Attorney.

WILLIAM ROWLAND, *Clerk.*

7 The Circuit Court for the County of Marquette.

THE WHITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

The defendant comes, by Dan. H. Ball, his attorney, and demands a trial of the matters set forth in the plaintiff's declaration.

DAN. H. BALL,
Attorney for Defendant.

Filed May 1, 1882.

WM. ROWLAND,
County Clerk.

8 *Petition and Bond for Removal to U. S. Court.*

Circuit Court for the County of Marquette.

THE WHITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

To the honorable the circuit court for the county of Marquette:

The petition of William C. Culbertson, defendant in the above-entitled cause, respectfuly shows—

1. That a suit was commenced or or about the third day of April, A. D. 1882, in the said circuit court for the county of Marquette by the above-named Whitbeck Company, as plaintiff, against your petitioner, as defendant.

2. That your petitioner is, and was at the time said suit was commenced, a citizen of the State of Pennsylvania.

3. That said plaintiff is, and was at the time said suit was commenced, a corporation organized and existing under the laws of the State of Wisconsin, having its principal office in said State or in the State of Illinois, and is, within the meaning of the acts of Congress, a citizen of the said State of Wisconsin.

4. That the said plaintiff claims in the declaration in this suit as damages against your petitioner, the sum of one thousand dollars and lands of the value of ten thousand dollars and upwards, and that

the matter in dispute in said suit therefore exceeds the sum of five hundred dollars, exclusive of costs.

5. That your petitioner, the said defendant, is ready and willing to give good and sufficient surety as this court may direct, for doing all the acts and things required to be done by the provisions of law upon the removal of the said suit into the circuit court of the United States, and offers herewith the bond of himself, with Dan. H. Ball, as surety, in the penal sum of one thousand dollars, conditioned that your petitioner shall enter in the next circuit court of the United States for the western district of Michigan, northern division, on the first day of its next term or session, copies of all process, pleadings, and other proceedings in the said suit, and doing such other appropriate acts as by the acts of Congress are required to be done upon the removal of a suit into the said circuit court of the United States.

Wherefore your petitioner prays that the said bond may be accepted as good and sufficient surety according to the said provisions of law; that your petitioner may have leave to remove the said cause into the said circuit court of the United States, pursuant to the statute in such case made and provided, and that all further proceedings in this court may be stayed. And your petitioner will ever pray, &c.

W. C. CULBERTSON.

DAN. H. BALL,
Defendant's Attorneys.

9 STATE OF MICHIGAN, } ss:
County of Marquette, }

Be it remembered that on this twenty-ninth day of August, A. D. 1882, before me personally appeared the above-named William C. Culbertson, and made oath that he was the defendant in the above cause; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge.

RICHARD BLACK,
Notary Public in & for said County.

Know all men by these presents, that we, William C. Culbertson, as principal, and Dan. H. Ball, as surety, are held and firmly bound unto the Whitbeck Company in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said Whitbeck Company, its successors, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each of them, firmly by these presents. Sealed with our seals, dated the twenty-ninth day of August, A. D. 1882.

Whereas the said Whitbeck Company, as plaintiff, has commenced against the said William C. Culbertson, as defendant, a certain suit in the circuit court for the county of Marquette; and, whereas, the said defendant has filed his petition in the said circuit court for the removal of said suit into the next circuit court of the United States for the western district of Michigan, northern division.

Now, therefore, the condition of this obligation is such, that if the above-named William C. Culbertson shall enter or cause to be entered in the said circuit court of the United States on the first day of its next term or session, copies of all process, pleadings, and other proceedings in the said suit, and do and cause to be done such other appropriate acts as are required to be done upon the removal of a suit into the circuit court of the United States, and shall pay all costs that may be awarded by the said circuit court if such court shall hold that such suit was wrongfully or improperly removed thereto, then the above obligation shall be void, otherwise it shall remain in full force and virtue.

W. C. CULBERTSON. [L. S.]
DAN. H. BALL. [L. S.]

10 STATE OF MICHIGAN, } ss:
County of ——, }

Dan. H. Ball, the surety named in the foregoing obligation, being duly sworn, deposes and says that he is a resident of the State of Michigan, and is worth the sum of two thousand dollars over all just debts and liabilities, in real estate, subject to execution in said county of Marquette.

DAN. H. BALL.

Subscribed and sworn to before me this 29th day of August, 1882.
RICHARD BLAKE,
Notary Public in & for said County.

Circuit Court for the County of ——.

—— —— *vs.* —— ——.

Please take notice that we are retained for the defendant in the above-entitled cause, and that upon the petition of the said defendant, and the bond accompanying the same, and copies of which said petition and bond are hereto annexed, and upon the files and records of said cause, we shall move the said court on the — day of ——, A. D. 187–, at the opening of court in the morning of said day, or as soon thereafter as counsel can be heard, for an order staying all proceedings in the said suit, and for leave to remove the same to the circuit court of the United State for the — district of Michigan, as prayed in the said petition.

—— ——,
Defendant's Attorney.

To —— ——, plaintiff's attorney.

STATE OF MICHIGAN, } ss:
County of ——, }

—— ——, being duly sworn, deposes and says that on the — day of ——, A. D. 187–, he served a notice, of which the within is a true copy, upon the within named —— ——, plaintiff's attorneys, by deliverering the same to —— ——, and that said notice was accompanied by copies of the within petition and bond.

—— ——.

Subscribed and sworn to, this — day of ——, 187–, before me—
——— ———,
——— ———.

11 [Endorsed:] No. —. Circuit court, county of ——. ——— ——— *vs.* ——— ———. Petition and bond for removal to U. S. court. Filed August 29th, A. D. 1882. C. M. Babcock, deputy clerk. Dan. H. Ball, def't's attorneys.

12 At a general term of the circuit court for the county of Marquette, continued and held at the court-house in the city of Marquette, in said county, on Tuesday, the twenty-ninth day of August, A. D. one thousand eight hundred and eighty-two.

Present: The Hon. C. B. Grant, circuit judge of the 25th circuit.

The court was opened for business in due form.

In Case of THE WHITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

On reading and filing the petition of the above-named defendant for the removal of this suit into the circuit court of the United States for the northern division of the western district of Michigan, in the sixth circuit, in pursuance of the laws of the United States relating to the removal of suits from the State courts, and upon filing the security offered by said defendant according to the requirements of said laws, and on motion of Dan. H. Ball, attorney for the said defendant, it is hereby ordered that the said security be accepted and the suit be removed into the next circuit court of the
13 United States, to be held in the said northern division of the western district of Michigan, and that no further proceedings be had in said suit in this court.

STATE OF MICHIGAN:

The Circuit Court for the County of Marquette.

THE WHITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

I, William Rowland, clerk of the circuit court for said county, do hereby certify that the annexed and foregoing are true copies of the declaration and of the other files and journal entries constituting the record of the cause therein entitled; that I have compared the said copies with the original thereof, now remaining of record in my office, and that they are correct transcripts therefrom and of the whole of such originals.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Marquette, this fourth day of September, A. D. 1882.

[Seal of the Circuit Court, Marquette County, Michigan.]

WILLIAM ROWLAND, *Clerk.*

[Endorsed:] The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Northern Division. The Whitbeck Company *vs.* William C. Culbertson. Filed Sept. 5th, 1882. Gad Smith, dep. clerk.

14 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan.

THE H. WITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

APRIL 16, 1883.

In the above-entitled cause it is hereby consented that upon filing this stipulation an order may be entered allowing the plaintiff to amend its declaration and all other proceedings taken on its behalf in said cause, by striking out the words "the Witbeck Company" and the words "Whitbeck Company" whenever they appear in such declaration or proceedings, and inserting in lieu thereof the words "the H. Witbeck Company," as the name of said plaintiff; also amending said declaration by striking out the words "the north-east quarter of section eighteen (18)."

EDWARD CAHILL,
Pl'ff's Attorney.

DAN. H. BALL,
Defendant's Attorney.

Filed May 5, 1883.

GAD SMITH, *Clerk.*

15 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan.

THE H. WHITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

APRIL 16, 1883.

In the above-entitled cause it is hereby consented that upon filing this stipulation an order may be entered allowing the plaintiff to amend its declaration and all other proceedings taken on its behalf in said cause, by striking out the words "the Witbeck Company" and the words "the Whitbeck Company" whenever they appear in such declaration or proceedings, and inserting in lieu thereof the words "the H. Witbeck Company" as the name of said plaintiff; also amending said declaration by striking out the words "the north-east quarter of section eighteen (18)."

EDWARD CAHILL,
Pl'ff's Attorney.

DAN. H. BALL,
Defendant's Attorney.

Filed May 10, '83.

GAD SMITH, *Clerk.*

16 *Declaration in Ejectment.*

The Circuit Court for the County of Marquette.

STATE OF MICHIGAN, } *ss:*
County of Marquette, }

The H. Whitbeck Company is a corporation organized and existing under the laws of the State of Wisconsin, and as plaintiff herein, by Edward Cahill, attorney, comes and file- this its amended declaration by consent, and complains of William C. Culbertson, defendant herein, of a plea of ejectment.

For that whereas the said plaintiff, on the tenth day of February, in the year one thousand eight hundred and eighty-two, was possessed of the following real estate and premises, situate in said county of Marquette, in said State of Michigan, and being known and designated as the south half of section eight (8); the northwest quarter of the southwest quarter, the southeast quarter of the southwest quarter, and the southeast quarter of section nine (9); the south half, the south half of the northeast quarter, and the southeast quarter of the northwest quarter of section ten (10); the north half of section fifteen (15), the north half of section seventeen (17), and lots one (1) and four (4) on section eighteen (18), all being in town forty-five (45) north, of range twenty-nine (29) west; to which said lands the plaintiff claims title in fee-simple. And the said plaintiff being so possessed thereof, the said defendant afterwards, to wit, on the tenth day of February, in said last-mentioned year, entered into said premises, claiming title thereto adverse to said plaintiff, and unlawfully withholds from said plaintiff the possession thereof, to the damage of said plaintiff one thousand dollars, and therefore it brings suit, etc.

EDWARD CAHILL,
Attorney for Plaintiff.

17 [Endorsed:] The circuit court for the county of Marquette. —— —— *vs.* —— ——. Narr. Filed May 10, A. D. 1883. Gad Smith, clerk.

To the within-named defendant:

Take notice that on filing a declaration in this cause, (of which the within is a true copy,) as commencement of suit, a rule was entered in the book of common rules, kept by the clerk of said court in his office, in ——, ——, requiring you to appear and plead to said declaration within twenty days after service on you of a copy thereof, and notice of said rule or judgment, etc.

Yours, etc.,

——,
Plaintiff's Attorney.

STATE OF MICHIGAN, } ss:
County of ——, }

I hereby certify and return that on the — day of ——, A. D. 18—, I served the declaration, of which the within is a copy, upon —— ——, the defendant named therein, by delivering to — personally a copy thereof, with the notice of rule to plead endorsed thereon as hereon endorsed.

Fees, ——.

—— ——, *Sheriff.*

STATE OF MICHIGAN, } ss:
County of ——, }

I hereby certify and return that on the — day of ——, A. D. 18—, I served the declaration, of which the within is a copy, upon —— ——, the defendant named therein, who w— in actual occupation of the premises described therein, by delivering a copy thereof, with the notice of rule to plead endorsed thereon as hereon endorsed, to —— ——, a person of proper age, at the dwelling house of said defendant, being absent therefrom.

Fees, ——.

—— ——, *Sheriff.*

18 UNITED STATES OF AMERICA:

May Term, Friday, July 20th, 1883.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, begun and held at the United States court rooms, in the city of Marquette, in said district, on Tuesday, the seventeenth day of July, A. D. one thousand eight hundred and eighty-three.

Court met pursuant to adjournment.

Present: Hon. Solomon L. Withey, district judge.

H. WITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

The parties to this cause being in court by their respective attorneys, ready for trial, thereupon came a jury, to wit, Terrence Moore, J. C. H. Pettin, Jonas McKerchy, Harry Diamond, G. N. Conklin, S. P. Kline, John Quim, Henry Roberts, Justin N. Mead, George Ruffe, Alex. G. Shields, and Walford Been, good and lawful men, who being duly impannelled, tried, and sworn well and truly to try the issue between the parties—

Whereupon the court adjourned until to-morrow at 9 o'clock a. m.

S. L. WITHEY.

19 UNITED STATES OF AMERICA:

May Term, Monday, July 21st, A. D. 1883.

Court met pursuant to adjournment.

Present: Hon. Solomon L. Withey, district judge.

H. WITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

The jury heretofore impannelled and sworn in this cause, sat together and heard further evidence therein.

Whereupon the court adjourned until Monday morning at 9 o'clock.

S. L. WITHEY.

20 UNITED STATES OF AMERICA:

May Term, Monday, July 23d, A. D. 1883.

Court met pursuant to adjournment.

Present: Hon. Solomon L. Withey, district judge.

H. WITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

The jury heretofore sworn in this cause sat together and heard the conclusion of the evidence, the arguments of counsel, and the charge of the court, and without retiring from the bar of the court do say, upon their oath, that the said defendant is guilty of unlawfully withholding from the said plaintiff the premises described in his declaration in this cause, and that the said plaintiff is well entitled to hold the same in fee as the the said plaintiff hath, in his said declaration, complained against him, the said defendant; and they assess the damages of the said plaintiff, over and above his costs and charges by him about his suit in this behalf expended, at six cents. Whereupon the court adjourned until to-morrow morning at 9 o'clock a. m.

S. L. WITHEY.

21 UNITED STATES OF AMERICA:

May Term, Tuesday, July 24th, A. D. 1883.

Court met pursuant to adjournment.

Present: Hon. Solomon L. Withey, district judge.

H. WHITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

The jury by whom the issue joined in this cause was tried, having found by their verdict that the said defendant is guilty of unlawfully withholding from the said plaintiff the premises described in his declaration in this cause, and that the said plaintiff is well entitled to hold the same in fee, and having assessed the damages of the said plaintiff by reason thereof over and above his costs and charges by him about his suit in this behalf expended at the sum of six cents, therefore it is considered that the said plaintiff do recover against the said defendant the possession of the said premises according to the verdict of the jury aforesaid, and that he have a writ of possession therefor according to the force, form, and effect of his said recovery. And it is further considered that the said plaintiff

22 do recover against the said defendant his damages by the jurors in form aforesaid assessed, together with his costs and charges aforesaid to be taxed, and that the said plaintiff have execution thereof. On motion of Dan. H. Ball, Esq., defendant's attorney, — ordered that the defendants have sixty days within which to move the court for a new trial of this cause, and that the

time for presenting and setting a bill of exceptions therein be extended for the same period, and in the mean time further proceedings, except taxation of costs, are stayed. Whereupon the court adjourned without day.

S. L. WITHEY.

23 In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

THE H. WITBECK COMPANY, Plaintiff,

vs.

WILLIAM C. CULBERTSON, Defendant.

Now comes the said defendant, William C. Culbertson, by Dan. H. Ball, his attorney, and moves the court that the verdict and judgment heretofore rendered in the above-entitled cause be set aside and a new trial granted for the following reasons, viz:

1st. Because the court erred, upon the trial of said cause, in admitting and receiving in evidence, a certain instrument in writing purporting to be a transcript from the returns of delinquent taxes of Marquette county for the year 1861; said transcript not having endorsed thereon nor annexed thereto such certificate as the laws of the State of Michigan require to constitute said transcript evidence in said cause; and that certificate was defective in this, to wit, that it did not state that said transcript was a correct transcript "of the whole of the original" and also because said certificate upon its face was to the purport; that said transcript was not a correct
24 transcript "of the whole of the original," those words in substance being erased from said certificate.

2d. Because the court erred in admitting in evidence the stubs of the book of county orders of Marquette county and especially stubs numbered 908, 909, 918, 924, 937, 945, 949, and others, as the same were not competent evidence in said cause upon any material fact in issue; that they were introduced as tending to show payment of certain sums of money to one Clarence E. Eddy, but were clearly not the best evidence which might be produced of that fact, if true; that there was no law requiring such stubs to be kept, and all entries thereon were clearly unofficial, and could only be evidence against the individual making the same.

3d. Because the court erred in holding and deciding that the legal presumption was, that the supervisors having voted to pay the circuit judge a certain amount of money as extra compensation at a meeting of the board in 1865, that such amount was included in the estimates for the ensuing year; and, that unless the defendant should show affirmatively that there was sufficient money in the general fund not otherwise appropriated to meet such pay-
25 ment, the court would presume without further evidence that an illegal tax was levied, and the tax sale and deed invalid.

4th. Because the court erred in holding on the trial of said cause that such a presumption, mentioned in the last paragraph, in any event was conclusive, that being at the most only a presumption of

fact, it should have been submitted to the jury, under instructions.

5th. That the court erred in holding on the trial of said cause, that because the board of supervisors voted to pay Clarence E. Eddy, judge of the circuit court, during his term of office, the sum of three hundred and fifty dollars per annum, in the entire absence of any proof as to what said payments were to be made for, the court would presume that they were for some unlawful purpose.

6th. That the court erred in instructing the jury to render a verdict for the plaintiff.

Dated September 20th, 1883.

DAN. H. BALL,
Att'y for Defendant.

26 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Northern Division.

THE H. WITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

Ejectment.

Now comes the said defendant, by Dan. H. Ball, his attorney, and moves that the judgment heretofore rendered in this cause be set aside and that a new trial be granted therein in accordance with the statute in such case made and provided.

Dated February 1st, 1884.

DAN. H. BALL,
Attorney for Defendant.

Circuit Court United States, Sixth Circuit, Western District Michigan, Northern Division.

THE H. WITBECK COMPANY, Pl'ff,

vs.

WILLIAM C. CULBERTSON, Def't.

Ejectment.

Received of Dan. H. Ball, attorney for the above-named defendant, twenty-one dollars ($21.00), as payment in full of plaintiff's costs and damages recovered in the former trial of said cause, and I consent that the judgment heretofore rendered in said cause may be vacated and a new trial granted under the statute in such case made and provided.

Dated Feb'y 1, 1884.

EDWARD CAHILL,
Pl'ff's Att'y

Filed Feb'y 1, '84.

GAD SMITH, *Clerk.*

27 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit & Western District of Michigan, Northern Division.

THE H. WITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

Ejectment.

On motion of Dan. H. Ball, attorney of the defendant in this cause, and on reading the written acknowledgment of Edward Cahill, Esq., attorney for the plaintiff, showing full payment of all damages and costs recovered by the plaintiff in the former trial of this cause, it is ordered that the judgment heretofore rendered in this cause be, and the same is hereby, set aside and vacated and that a new trial be granted therein in accordance with the statute in such case made and provided.

Dated February 2d, A. D. 1884.

S. L. WITHEY,
U. S. Dist. Judge.

Filed Feb'y 2, '84.

GAD SMITH, *Dep. Clerk.*

28 UNITED STATES OF AMERICA:

May Term, Tuesday, July 15th, A. D. 1884.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, begun and held at the United States court rooms in the city of Marquette, in said district on Tuesday, the fifteenth day of July, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Hon. Soloman L. Withey, district judge.

THE H. WHITBECK COMPANY, *vs.* WILLIAM C. CULBERTSON. } No. 64.

This cause coming on for trial, the following jury was called and sworn, to wit: Sampson Bice, Benj. F. Chynoweth, Fred Wolner, Robert Ivey, John W. Kingston, Lewis F. Trempe, Charles Frost, Jacob Schneider, George Mall, George L. North, William Richards, and E. J. Ranson, who sat together in the jury seats and listened to the evidence this day adduced.

The court adjurned until July 16.

S. L. WITHEY.

29 UNITED STATES OF AMERICA:

May Term, A. D. 1884.

WEDNESDAY, *July* 16, 1884.

The court met persuant to adjournment.

Present: The Honorable Solomon L. Withey, district judge.

THE H. WHITBECK COMPANY, *vs.* WILLIAM C. CULBERTSON. } No. 64.

The jury heretofore impannelled and sworn in this cause sat together and heard the conclusion of the evidence, the arguments of counsel, and the charge of the court, and retired from the bar thereof in charge of George Wagner, an officer of the court duly sworn to attend them, to consider of their verdict to be given, and after being absent for a time return into court and say upon their oaths that the said defendant is guilty of unlawfully withholding from the said plaintiff, the premises described in its declaration in this cause as the south half of section eight (8), the northwest quarter of the southwest quarter, the southeast quarter of the southwest quarter and the southeast quarter of section nine (9); the south half, the south half of the northeast quarter and the southeast quarter of the northwest quarter of section ten (10); the north half of section fifteen (15); the north half of section seventeen (17), and lots
30 one and four (4) on section eighteen (18), all being in township forty-five (45) north of range twenty-nine (29) west, situated in the county of Marquette and state of Michigan. That the value of said premises exceeds the sum of five thousand dollars, and that the said plaintiff is well entitled to hold the same in fee as the said plaintiff hath in its declaration complained against him the said defendant; and they assess the damages of the said plaintiff over and above its costs and charges by it about its suit in this behalf expended at six cents.

Therefore it is considered that the said plaintiff do recover against the said defendant the possession of the said premises according to the verdict of the jurors aforesaid and that it have a writ of possession therefor, according to the force, form, and effect of its said recovery.

And it is further considered that the said plaintiff do recover against the said defendant, its damages by the said jurors in form aforesaid assessed, together with its costs and charges aforesaid to be taxed, and that the said plaintiff have execution thereof.

S. L. WITHEY.

31 Supreme Court of the United States.

WILLIAM C. CULBERTSON, Plaintiff in Error,

vs.

THE H. WITBECK COMPANY, Defendant in Error.

To the clerk of the circuit court of the United States for the western district of Michigan:

The above-named William C. Culbertson makes application to you to obtain a writ of error from the said Supreme Court, to be directed to the judge of the said circuit court to bring up the record in a certain suit lately depending in said circuit court wherein the above-named defendant, The H. Witbeck Company, was plaintiff, and the said William C. Culbertson was defendant in a plea of ejectment; the said William C. Culbertson complaining that error hath intervened in the said record to his detriment.

You will please issue the writ in the usual form, and make the same returnable on the first day of the next ensuing term of the said Supreme Court.

Dated September 1st, 1884.

JOHN W. STONE,
Attorney for Plaintiff in Error.

Filed Sept. 3, 1884.

W. S. HILL,
Dep. Clerk.

32 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Northern Division of the Western District of Michigan.

THE H. WITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

WESTERN DISTRICT OF MICHIGAN, *ss:*

Dan. H. Ball, of the city and county of Marquette, in said district, being duly sworn, deposes and says that he is the attorney of the above-named defendant in this cause, and that he is acquainted with values of real estate in the locality where the lands in controversy in this suit are situated, and that the lands described in the declaration in this cause, the title to which was in controversy in this suit, exceed in value the sum of five thousand dollars.

DAN. H. BALL.

Subscribed and sworn to before me the first day of September, A. D. 1884.

CHESTER B. HINSDILL,
U. S. Commissioner, West. Dist. Michigan.

Filed Sept. 3, 1884.

W. S. HILL,
Dep. Clerk.

33 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Northern Division of the Western District of Michigan.

THE H. WITBECK COMPANY *vs.* WILLIAM C. CULBERTSON.

At a session of said court, held at the court room of said court, in the city of Marquette in said district, on the fifteenth day of July, in the year one thousand eight hundred and eighty-four, before the Honorable Solomon L. Withey, judge of said court, the issue joined between the parties in this cause came on to be tried by a jury of said district, for that purpose duly empanneled, at which day came the said plaintiff and the said defendant, by their respective attorneys, and the jurors of the jury aforesaid, who were then and there duly sworn to try the issue aforesaid.

And the said plaintiff's counsel, to maintain and prove the issue on the part of the plaintiff, offered and read in evidence articles of incorporation of the plaintiff, tending to show due incorporation and authority to hold lands.

Plaintiff's counsel further offered and read certain patents, issued by the United States, dated May fifth, 1857, conveying to Albert L. Magilton all the lands described in the declaration, except the north half of section fifteen (15), in town. forty-five (45) north of range twenty-nine (29) west, and conveying said last mentioned parcel of land to Stephen Walsh.

34 Also deeds from Albert L. Magilton and Stephen Walsh, dated October twenty-nine, 1855, conveying all said lands to William A. Pratt.

Also evidence tending to show that said lands were entered at the proper land office, October first, 1855.

Plaintiff's counsel then offered in evidence what purported to be the record of a deed from William A. Pratt and wife, to Still Manning and William Wright, dated October twenty-ninth, 1855, which record was made and kept in the office of the register of deeds for the county of Marquette, wherein said lands are situated, conveying the lands described in the declaration in this cause, and other lands, amounting in all to fourteen thousand sixty-six and $\frac{65}{100}$ (14,066.65) acres. The following is a copy of said record, omitting the descriptions of land:

William A. Pratt & wife to Still Manning and William Wright:

This indenture made this twenty-ninth day of October, in the year of our Lord one thousand eight hundred and fifty-five, between William A. Pratt and Harriett W. Pratt, of Chippewa county, in the State of Michigan, of the first part, and Still Manning and William Wright of Newark in the State of New Jersey, of the second part, witnesseth, that the said party of the first part for and in consideration of the sum of forty-two thousand one hundred ninety-nine dollars and ninety-five cents ($42,199.95), lawful money of the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and ac-

knowledged, have granted, bargained, sold, remised, released, aliened conveyed and confirmed, and by these presents do grant
35 bargain, sell, remise, release, alien, convey, and confirm unto the said party of the second part, and to their heirs and assigns, forever.

All those certain pieces or parcels of land lying and situated in the county of Marquette, in the State of Michigan, and in the district of lands subject to sale at the United States land office, Sault Ste. Marie, Mich., to wit:

* * * * * * *

Together with all and singular, the tenements, hereditaments, and appurtenances thereto belonging or in anyway appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, dower and right of dower, claim, and demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises with the said hereditaments and appurtenances.

To have and to hold the above-premises, as above described, with the appurtenances unto the said party of the second part and to their heirs and assigns forever; and the said party of the first part, their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, their heirs and assigns, that at the time of the ensealing and delivery of these presents they are well siezed of the premises above conveyed as of a good, sure, perfect, absolute, and indefeasible estate of inheiritance in the law in fee-simple, and that the above-bargained premises, in the quiet and peaceable possession of the said party of the second part, their heirs and assigns, against all and every
36 person or persons lawfully claiming or to claim the whole or any part thereof, they will forever warrant and defend.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

WM. A. PRATT. [L. S.]
HARRIET W. PRATT. [L. S.]

Signed, sealed, and delivered in presence of—
STEPHEN WALSH,
For William A. Pratt.
W. H. ROCKWELL,
GEO. HOWE,
For Harriet W. Pratt.

The word "half" in the twelfth line, was interlined before signing (on the second page).

STEPHEN WALSH.
EBENEZER WARNER.

STATE OF MICHIGAN, *Chippewa County:*

On this 29th day of October, 1855, before me, the subscriber, appeared William A. Pratt, who acknowledged that he executed the foregoing instrument; and I certify that I know the person who made the said acknowledgment to be the individual described in and who executed the within instrument.

EBENEZER WARNER,
Justice of the Peace.

Defendant's counsel objected to said evidence for the reason that said deed, as appears by said record, had but one subscribing witness as to the grantor, William A. Pratt.

But said objection was overruled by the court and said record was admitted in evidence; to which defendant's counsel excepted.

Plaintiff's counsel offered in evidence an instrument purporting to be a deed from Still Manning and wife and William Wright and wife to Edward C. Wilder, conveying all the lands described in the declaration in this cause for the sum of ten dollars.

The only acknowledgment, authentication, or proof of the execution of said deed were the following certificates attached to the deed:

37 STATE OF NEW JERSEY, } ss:
Essex County, }

Be it remembered that on this sixth day of July, in the year one thousand — sixty, before me, William A. Richter, a master in chancery and notary public in and for said State of New Jersey, personally appeared Still Manning and Henrietta, his wife, and William Wright and Minerva, his wife, who I am satisfied are the grantors in the within deed of conveyance; and I having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed, and the said deed in all things to be their free act and deed. And the said Henrietta Manning and Minerva Wright being by me privately examined, separate and apart from their said husbands, did further acknowledge that they signed, sealed and delivered the same as their voluntary act and deed freely, without any fear, threats, or compulsion of their said husbands.

In witness whereof I have hereunto set my hand and affixed my notarial seal of office on the day and year first above written, at the city of Newark, in said State.

[SEAL.] WILLIAM A. RICHTER,
Master in Chancery.

STATE OF NEW JERSEY, } ss:
County of Essex, }

I, William A. Smith, clerk of the county of Essex and clerk of the circuit court and inferior court of common pleas of said county,

do hereby certify that said courts are courts of record,
38 that William A. Richter, Esq., was at the time of taking the same master in chancery and a notary public in and for said county, duly commissioned and sworn, and qualified to act as such; that as such master in chancery he is duly authorized by the laws of the State of New Jersey to take the proof and acknowledgment of deeds and other instruments in writing: that the annexed instrument is executed and the proof of acknowledgment thereto taken in accordance with the laws of said State; that I am well acquainted with the handwriting of such master in chancery and verily believe his signature to the same is gennine.

In testimony whereof I have hereunto set my hand and affixed my official seal, at the city of Newark, in said county of Essex, this twenty-sixth day of May, A. D. 1881.

[SEAL.] WM. A. SMITH, *Clerk.*

Defendant's counsel objected to the admission of said deed for the reason that it does not appear from said certificate that the persons acknowledging were the same persons as those named as grantors in said deed.

But said objection was overruled by the court, and defendant's counsel excepted.

Plaintiff's counsel then offered in evidence the following record, from the office of the register of deeds of said county of Marquette, viz:

39 *Last Will and Testament of Edward C. Wilder, dec'd.*

I, Edward C. Wilder, of city, county and State of New York, do make, publish and declare my last will and testament as follows, viz:

First.

I direct that my just debts and funeral expenses be paid.

Second.

I give, devise and bequeath all my property, both real and personal, unto my beloved wife, Sophia A. Wilder.

Third.

I hereby appoint my said wife, Sophia A. Wilder, sole executrix of this my last will and testament.

In witness whereof, I have hereunto set my hand and seal, this thirtieth day of July, 1874.

EDWARD C. WILDER. [L. S.]

Subscribed by the testator in the presence of each of us, and at the same time declared by him to us to be his last will and testament and thereupon at the request of the testator and in his presence and in the presence of each other, we sign our names hereto as witnesses, this thirtieth day of July, 1874.

FRANCES W. FARWELL.
STERLING F. HAYWARD.

STATE OF MICHIGAN, } ss:
County of Marquette, }

At a session of the probate court, for the county of Marquette, holden at the probate office in the city of Marquette, on Monday, the thirty-first day of October, in the year one thousand eight hundred and eighty-one.

Present: Edward S. Hardy, judge of probate.

In the Matter of the Estate of EDWARD C. WILDER, Deceased.

This day having been appointed by the court for hearing the petition of James E. Dalliba praying amongst other things, for reasons therein set forth, that a certain instrument, purporting to be a copy of the last will and testament of said deceased, and the probate thereof duly authenticated and heretofore presented to this court with said petition be allowed, filed and recorded. Now come into court the said petitioner and answers, and it satisfactorily appearing by due proof on file, that a copy of the order of this court touching the hearing of said petition made on the seventh day of October last past, had been duly published as therein directed, whereby all parties interested in the premises were duly notified of said hearing.

And it further satisfactorily appearing to the court, after a full hearing upon said petition and on examination of the proofs and allegations of the petitioner, that said deceased was, at the time of his death, a resident of the city of New York, in the State of New York, and died leaving his last will and testament, which was duly approved and allowed in the surrogate court for, in and of the county of New York, in the State of New York, according to the laws thereof, and that he was possessed of estate situate in said county of Marquette, on which said will operates.

And the evidence touching the premises being materially considered, it satisfactorily appears that said copy of said will ought to be allowed in this State as the last will and testament of said deceased.

It is therefore ordered, adjudged and declared by this court that said copy of said last will and testament of said deceased be allowed, filed, and recorded in this court and that the same shall have full force and effect in this State, as such will, agreeably to the statute in such case made and provided.

And it is further ordered that the execution of said last will and testament be committed and the administration of the estate of the said deceased be granted to said Sophia Wilder, the executrix in said will named, who is ordered to give bond in the penal sum of one thousand dollars with sufficient sureties, as required by the statute in such case made and provided, and that the same being duly approved and filed, the letters testamentary do issue in the premises.

EDWARD S. HARDY,
Judge of Probate.

STATE OF MICHIGAN, } ss:
County of Marquette, }

Probate Court for said County.

Be it remembered that the annexed and foregoing instrument, being a duly authenticated copy of the last will and testament of Edward C. Wilder, late of the county of New York, in the State of New York, deceased, which was duly allowed, filed, and recorded in said court in pursuance of the decree thereof, of which the foregoing is a true, full, and correct copy.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at the city of Marquette, in said county, this thirty-first day of October, in the year one thousand eight hundred and eighty-one.

[SEAL.] EDWARD S. HARDY,
Judge of Probate.

42 Defendant's counsel objected to said record as evidence for the reason that said record contained no proof that the probate court of the county of Marquette obtained jurisdiction to make the order admitting said will to probate in this State, and that it contains no record of any authentication or probate by any foreign court or officer.

Said objection was overruled by the court and said record was admitted in evidence, and defendant's counsel excepted.

Plaintiff's counsel then offered in evidence a quit-claim deed executed by Sophia A. Wilder, as widow and sole executrix of Edward C. Wilder, to J. Henry Moores, dated May seventeenth, 1881, and also a quit-claim deed from Sophia A. Wilder to J. Henry Moores, dated December eighth, 1881, purporting to convey all the lands described in the declaration in this cause.

Defendant's counsel objected for the reason that the will under which the grantor purported to act, and under which she claimed, had not been duly proved and authenticated, which objection was overruled by the court and defendant's counsel excepted.

Plaintiff's counsel then offered and read in evidence deeds of conveyance from J. Henry Moores, vesting in the plaintiff, before the commencement of this suit, all the title of said J. Henry Moores to said lands acquired by the conveyances aforesaid.

It was admitted on the part of the defendant that he claimed title to the lands in the said declaration described adversely to the the plaintiff.

Thereupon the plaintiff's counsel rested his case.

43 *Defence.*

The said defendant's counsel, to maintain and prove the issue on the part of the defendant, offered in evidence the record of a certain declaration of trust, executed by Still Manning and William Wright, dated November seventeenth, 1855, duly recorded in the office of the register of deeds, for said county of Marquette,

covering all the lands described in the deed above mentioned from William A. Pratt, to said Manning and Wright, dated October twenty-ninth, 1855, that is to say, all the land in controversy in this suit, and other lands, amounting in all to fourteen thousand sixty-six and $\frac{65}{100}$ (14,066.65) acres. The following is a copy of said record, omitting the description of land, viz:

Still Manning & William Wright to William A. Pratt.

Declaration of Trust.

Know all men by these presents, that, whereas William A. Pratt and Harriett W., his wife, of Chippewa county, in the State of Michigan, have recently, by certain deeds of conveyance, bargained, sold and conveyed to us, Still Manning and William Wright, both of the city of Newark, in the county of Essex, and State of New Jersey, certain lands situated in the county of Marquette, in the State of Michigan, that is to say:

All those certain pieces or parcels of land lying and situate in the county of Marquette, in the State of Michigan, and in the
44 district of land subjects to sale at the United States Land Office, Sault Ste. Marie, Michigan, to wit:

* * * * * * *

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainer and remainders, rents, issues and profits thereof:

Now therefore, these presents are to declare and make known, and we, the said Still Manning and William Wright, do hereby declare and make known, to all whom it may concern, that the purchase money of the said lands was not paid wholly by us, but was paid and contributed as follows—that is to say: One-fourth part thereof by Aaron Peck, of Orange, in the county of Essex, and State of New Jersey; one-fourth part thereof by the said William A. Pratt, of Sault Ste. Marie, in the county of Chippewa, in the State of Michigan; one-fourth part thereof by the said Still Manning, and the remaining one-fourth part thereof by the said William Wright. And we do hereby further declare and make known that we do hold the said lands in trust for ourselves and the said Aaron Peck and William A. Pratt, their heirs and assigns in the proportions above mentioned—that is to say—one undivided fourth part thereof in trust for the said Aaron Peck; one undivided fourth part thereof in trust for the said William A. Pratt; one undivided fourth part therof in trust for the said Still Manning; and one undivided fourth part thereof in trust for the said William Wright, for them, their heirs, assigns, respectively. And we do hereby further declare and make known that in the management, disposal and conveyance of the said lands or any part thereof, we and the survivor of, us and the heirs of such survivor are to be governed by the expressed wishes of
45 a majority in the interest of the said shareholders or their heirs or assigns the shareholders for the time being; and

that we or the survivor of us or the heirs of such survivor are not to sell or dispose of any of said lands without the consent of such majority in interest. This clause is not intended however to prevent each or any shareholder from disposing of his own undivided interest in any manner he shall see fit.

And we do hereby further declare and make known that all proceeds and profits arising or to arise from the said lands or from any part of the same are to be divided between the said shareholders, their heirs, and assigns for the time being in the manner and proportions above expressed.

In witness whereof we have hereunto set our hands and seals the seventh day of November, in the year of our Lord one thousand eight hundred and fifty-five.

S. MANNING. [L. S.]
WM. WRIGHT. [L. S.]

Signed, sealed, and delivered in presence of—
MOSES R. KING.
THEODORE BRADLEY.

The words "of section nine (9)," on second page, erased, and the figures "(44)," on third page, interlined, before execution. Also, on second page, the word "quarter" interlined before execution.

STATE OF NEW JERSEY, *Essex County, City of Newark,* } ss:

Be it remembered that on this twenty-first day of November, A. D. eighteen hundred and fifty-five, before me, Moses R. King, a commissioner of deeds for the State of Michigan, in and for the State of New Jersey, duly appointed and commissioned by the Governor of the said State of Michigan, and sworn, residing
46 in the city of Newark, personally appeared Still Manning and William Wright, within named, both known to me to be the persons who executed the within instrument, and acknowledged the same to be their free act and deed.

In testimony whereof I have hereunto set my hand and affixed my official seal at my office, in the said city of Newark, the day and year aforesaid.

[L. S.]
MOSES R. KING,
The Commissioner for the State of Michigan.

And defendant's counsel, in connection with said offer, offered to show that one-half of the interest of said William A. Pratt, to wit, one undivided eighth interest under said declaration of trust had been transferred to other parties and had not been acquired by said plaintiff.

Plaintiff's counsel objected to the admission of said evidence as irrelevant, and said objection was sustained by the court; said court deciding that the legal title remained in Manning and Wright, and that they could convey it. To said ruling defendant's counsel excepted.

Said defendant's counsel, to further maintain and prove the issue on his part, offered and read in evidence deeds executed in due form of law, by the auditor general of the State of Michigan, purporting to convey all the lands described in the declaration in this cause, except the southeast quarter of section nine (9), the southeast quarter of southwest quarter of section nine (9), and lot one of section eighteen (18), to divers persons for delinquent taxes assessed thereon for the year 1861, and mesne conveyances transferring
47 to the defendant all the title acquired by said several persons under and by virtue of said deeds.

Also, deeds executed by the auditor general of the State of Michigan, in due form of law, purporting to convey all the lands described in the declaration in this cause, except the southest quarter of section nine (9), to Henry D. Smith, for delinquent taxes assessed thereon for the year 1865, and deeds of conveyance transferring all the title so acquired by said Henry D. Smith to the defendant.

Also, deeds executed by the auditor general of the State of Michigan, in due form of law, purporting to convey to the plaintiff for delinquent taxes assessed thereon for the year 1866, the south half of section ten (10), the southeast quarter of northest quarter of section ten (10), in town. forty-five (45) north of range forty-five (45) west, part of the lands described in the declaration in this cause.

All the auditor general's deeds, hereinbefore mentioned, bear date before the commencement of this suit, and were in the same form, and contained the same recitals, except as to dates, names of purchasers, description of land and amounts paid, as the two auditor general's deeds hereinbefore set out in full, some being of the form entitled "State Tax Land Deed," and some of the form entitled "Tax Deed."

Defendant's counsel further offered and read in evidence (under objection of plaintiff's counsel for the reason that they bear date after the commencement of this suit) two deeds from the auditor general of the State of Michigan to the defendant, of which the following are copies:

48 *State Tax Land Deed.*

This indenture made the eighteenth day of August, in the year of our Lord one thousand eight hundred and eighty-three, between Hubert R. Pratt, deputy auditor general of the State of Michigan, of the first part, and William C. Culbertson and Welcome Hyde, of the second part, witnesseth: That whereas, in pursuance of the provisions of law, the said parties of the second part, on the eighteenth day of July, A. D. 1868, became the purchaser of the rights of the State in and to the following described lands, situate in the county of Marquette, in said State, which were bid off to the State for the taxes assessed thereon in the year 1866, to wit:

South half of section eight, containing three hundred and twenty acres more or less; southwest quarter of northeast quarter of section ten, containing forty acres more or less; southeast quarter of section nine, containing one hundred and sixty acres more or less; north half of section fifteen, containing three hundred and nineteen acres

and fifty-one hundredths of an acre more or less; north half of section seventeen, containing three hundred and twenty acres more or less; and lots one, four, and six of section eighteen, containing one hundred and thirty-five acres and seventy hundredths of an acre more or less; all in town. forty-five north of range twenty-nine west.

And whereas the said parties of the second part obtained certificates from the auditor general for the purchase of the above-described lands, according to law, and paid to the State treasurer upon such certificate the sum of ninety-four dollars and seventy-five cents, being the amount of purchase money thereof, as pro-
49 vided by law, which certificates have been presented and surrendered to the said deputy auditor general.

Now, therefore, this indenture witnesseth that the said Hubert R. Pratt, deputy auditor general of the said State of Michigan, in the name of the people of said State, and by virtne of the authority vested in him by the laws thereof, in consideration of the premises and the payment of the purchase-money above mentioned, the receipt whereof is hereby confessed and acknowledged, does, by these presents remise, release, and quit claim unto the said William C. Culbertson and Welcome Hyde, parties of the second part, and to their heirs and assigns forever, all the rights acquired by the State in virtue of the original sale or sales to the State in the premises above described, subject to all taxes duly assessed thereon.

In testimony whereof the said Hubert R. Pratt, deputy auditor general as aforesaid, has hereunto set his hand and seal the day and year first above written.

HUBERT R. PRATT, [L. S.]
Deputy Auditor General of the State of Michigan.

Signed, sealed, and delivered in presence of—
ABRAM HERNLY.
EDITH E. DAGNE.

STATE OF MICHIGAN, } ss:
County of Ingham, }

On this 18th day of August, A. D. 1883, before me, a notary public in and for said county, personally came the above-named Hubert R. Pratt, deputy auditor general of said State, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

MYRON B. CARPENTER,
Notary Public, Ingham County, Michigan.

50 STATE TREASURER'S OFFICE,
$0.55. LANSING, MICH., *September* 4, 1883.

Received of the above-named parties the sum of fifth-five cents in full for office charges on delivery of this deed.

E. H. BUTLER,
State Treasurer.

(Countersigned:)
WILLIAM C. STEVENS, *Auditor General.*
A. H.

Tax Deed.

This indenture, made the eighteenth day of August, in the year of our Lord one thousand eight hundred and eighty-three, between Hubert R. Pratt, deputy auditor general of the State of Michigan, of the first part, and William C. Culbertson, of Girard, Pa., of the second part, witnesseth: That whereas at a sale made by the treasurer of the county of Marquette, in said State of Michigan, at the county seat whereof, in accordance with the provisions of law, and under the direction of the auditor general, of lands situated in said county, which were returned to the office of said auditor general for delinquent taxes for the year 1867, and which taxes, with the interest and charges thereon, remain unpaid; the said party of the second part did become the purchaser at such sale on the fifth day of October, A. D. 1868, of the following-described lands, situated in said county of Marquette, to wit:

South half of section eight, containing three hundred and twenty acres more or less; southeast quarter of section nine, containing one hundred and sixty acres more or less; southeast quarter of southwest quarter of section nine, containing forty acres more or
51 less; northwest quarter of southwest quarter of section nine, containing forty acres more or less; south half of section ten, containing three hundred and twenty acres more or less; south half of northeast quarter of section ten, containing eighty acres more or less; southeast quarter of northwest quarter of section ten, containing forty acres more or less; north half of section fifteen, containing three hundred and nineteen acres and twenty-hundredths of an acre more or less; and north half of section seventeen, containing three hundred and twenty acres more or less; lots one and four of section eighteen, containing one hundred and eight acres and twenty-hundredths of an acre more or less; and northeast quarter and northeast quarter of northwest quarter of section thirty-five, containing two hundred acres more or less; all in township forty-five north, of range twenty-nine west.

And whereas the said party of the second part has paid the full amount of the purchase-money for the same, to wit, the sum of fifty-eight dollars and forty-seven cents, to the treasurer of said county and obtained his certificates of said purchase according to law; and whereas the said land has not been redeemed as the law provides, and the said party of the second part has presented and surrendered to the depcty auditor general the certificates of purchase aforesaid:

Now, therefore, this indenture witnesseth that the said Hubert R. Pratt, deputy auditor general of the said State of Michigan, in the name of the people of said State and by virtue of the authority vested in him by the laws thereof, in consideration of the premises and of the sum aforesaid paid by the said party of the second part as above mentioned, the receipt whereof is hereby confessed,
52 has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns forever, the premises

above described, with all and singular the rights, privileges, hereditaments, and appurtenances to the same belonging or in anywise appertaining.

To have and to hold the same unto the said party of the second part, his heirs and assigns forever.

In testimony whereof the said Hubert R. Pratt, deputy auditor general as aforesaid, has hereunto set his hand and seal the day and year first above written.

HUBERT R. PRATT, [L. S.]
Deputy Auditor General of the State of Michigan.

Signed, sealed, and delivered in presence of—
ABRAM HERNLY.
EDITH E. DAGNE.

STATE OF MICHIGAN, } ss:
County of Ingham, }

On this 18th day of August, A. D. 1883, before me, a notary public in and for said county, personally came the above-named Hubert R. Pratt, deputy auditor general of said State, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

MYRON B. CARPENTER,
Notary Public, Ingham County, Michigan.

Defendant rested.

53 *Rebuttal.*

Plaintiff's counsel offered in evidence by way of rebuttal, transcripts of documents from the auditor general's office, duly certified, as follows:

Transcripts of the county treasurer's returns of delinquent taxes, of the notices of sale with the affidavits of publication, and the county treasurer's returns of sales made for the delinquent taxes, so far as relates to the lands in controversy, for the delinquent taxes of the years 1861, 1865, 1866, and 1867, all of which are hereto annexed, marked as exhibits, and numbered from 1 to 12 inclusive.

Plaintiff's counsel then offered in evidence the record of a resolution of the board of supervisors of Marquette county, adopted June 17th, 1865, as follows:

Resolution.

"Resolved that the sum of $350 per annum be allowed and paid to Hon. Clarence E. Eddie, commencing with his term of office as judge of the 12th judicial circuit, and continuing until the expiration of the term for which he was elected, and that the same be paid out of the contingent fund, or out of any moneys in the treasury not otherwise appropriated, in quarterly instalments, upon the order of the county clerk, countersigned by the chairman of the board of supervisors."

Defendant's counsel objected thereto as irrelevant, but said objection was overruled by the court, and defendant's counsel excepted, and said record was admitted and read in evidence.

54 Plaintiff's counsel further offered evidence tending to show that the balance of funds in the treasury of the county of Marquette, January, 1866, was only the sum of $5.23, to which evidence defendant's counsel objected as irrelevant, but said objection was overruled by the court, and defendant's counsel excepted, and said evidence was given.

Plaintiff's counsel then called as a witness Gad N. Smith, who testified that he is county clerk of Marquette county and clerk of the board of supervisors and has been for a year and a half; that the system adopted, for drawing mony from the treasury of said county, was by warrants, drawn upon the county treasury; that the county clerk keeps a record of such warrants upon stubs, showing the number, amount, date, name of payee, and purpose for which they were drawn. That a journal is kept, but that is written up from the stubs. He produced a book of stubs, which he testified was among the files of his office, purporting to be a book of stubs, of warrants drawn in 1865, and 1866, and 1867, and 1868.

Being cross-examined, he testified that the clerk in filling out the stubs ascertained the objects for which the warrants are drawn, either from the resolution of the board of supervisors, or from the bills that are presented. If there was no bill, then it would be from the resolution of the board, ordering a certain amount paid.

Plaintiff's counsel then offered in evidence stubs from the stub-book so produced by the county clerk, as follows: "$87.50. No. 781. July 5, 1865. To Hon. C. E. Eddie, for services as judge," and twelve others dated at various times, from August 29th, 1865,

55 to September 29, 1868, all similar to the one set forth above, for $87.50 each.

Defendant's counsel objected to said stubs for the reason that they were irrelevant, and also that they were not competent evidence of the object for which the money was paid. Said objection was overruled by the court and defendant's counsel excepted. Said stubs were read in evidence.

The records of the board of supervisors for the year 1865 were offered showing no sum of money voted to Clarence E. Eddie other than by the resolution aforesaid.

Plaintiff's counsel then offered evidence to show that all the aforesaid orders were paid out of the general fund of the county; to which defendant's counsel objected as irrelevant. Said objection was overruled by the court, and said evidence was given; to which defendant's counsel excepted.

Plaintiff's counsel offered and read in evidence the following from the record of the annual meeting of the board of supervisors of Marquette county, held in the month of October, 1865, viz:

"On motion, it was voted that a tax of one cent on each dollar of the valuation, as determined by the board, of which $3,500 shall be set apart as a poor fund, $1,000 as a fund applicable to the construction and repair of roads and bridges and public buildings, and the

balance as a fund for general purposes, be levied and raised as a county tax, apportioned as follows: To the township of Marquette, $6,136.25." (Then follows the amounts apportioned to the other townships.)

W. P. HEALY was then sworn as a witness for the plaintiff, and testified that he was a member of the board of supervisors of
56 Marquette county during the year 1865, and remembers the circumstance of money being voted to Clarence E. Eddie.

The record of resolution of board of June 17th, 1865, above quoted, was shown to the witness, and he testified that he remembered about it, that it was offered by him.

He was asked to state what discussion was had about the resolution in the board.

Defendant's counsel objected for the reason that it was irrelevant, and that it was not competent. Said objection was overruled by the court and defendant's counsel excepted.

The witness testified, in answer to said question, that the substance of the discussion was that we could not get a good judge without we paid extra compensation, and it was agreed that Judge Eddie should have $350; that it was understood and declared that the circuit judge could not live on what the State was paying him, and this was to pay him more that the State was paying.

He further testified that the contingent fund was made up of different items.

Q. In making an estimate of what was necessary to raise for the contingent fund, how did you arrive at it, or the board?

Defendant's counsel objected that it was incompetent, and that the records and files in the office of the clerk of the board was the only evidence of the action of the board.

The court overruled said objection and decided that the witness might testify whether the item of $350 for the circuit judge was included by the board in making up their estimate of the amount required to be raised for the contingent fund; to which ruling the defendant's counsel excepted.

The witness testified under said ruling that said amount was included by the board as an item in making up the contingent fund that year and every year right along. Witness was a
57 member of the board from 1864, continuously, to 1869.

M. H. MAYNARD, called as a witness for the plaintiff, testified that he was clerk of the board of supervisors of Marquette county in 1861, and remembers the circumstance of money being voted to Judge Goodwin.

The record of a resolution of the board of supervisors of Marquette county, adopted October 21st, 1861, was then offered and read in evidence, as follows:

"The subject of additional compensation to Judge Goodwin, being under consideration, on motion of —— —— it was resolved that all former action of the board on this subject be rescinded, and that the sum of $400 be paid to Judge Goodwin, in orders on the treasurer

of this county, upon his signing a receipt in full of all demands against the county on such account, up to the first day of January, 1862; such receipt to be filed with the clerk before such orders are issued."

Said witness further testified that said Judge Goodwin was district judge of the upper peninsula at that time.

Q. What was the discussion that is referred to in that resolution?

Defendant's counsel objected that the proposed testimony was irrelevant, and that it was not competent to show the action of the board except by the record.

Said objection was overruled by the court, and defendant's counsel excepted. Thereupon the witness answered said question as follows:

"The fact was, as I recollect it, there had been previously allowances made to Judge Goodwin as additional compensation for his services as judge. There had been a resolution adopted
58 by the board sometime previously, and when Mr. Pendill and Mr. Edwards came into the board they stopped the payment of that money on the ground that in their judgment it was illegal. And quite a sum had accrued under the former resolution, which had remained unpaid for some time. Judge Goodwin came and talked with me about it; and requested me to use my influence with the board, and to procure the allowance and the payment of the sums which had previously been ordered, or the allowance of other sum as additional compensation; and I did so, and the matter was discussed a great deal both in and out of the board at different times. Pendill and Edwards were the leading members of the board. There were three members; and the result was, that at this meeting, they appear to have taken this action, which, as the resolution recites, repeals the previous action of the board and allows this sum."

By the COURT: I understand you to say that the talk in the board at the time of the adoption of this resolution was that this was voted to Judge Goodwin as a part of his compensation?

A. Additional to the salary paid by the State; compensation for his services as judge.

The witness was then asked whether, as a matter of fact, the money so appropriated was put into the tax for that year.

Defendant's counsel objected to said testimony as incompetent, and that the record was the only proper evidence; but said objection was overruled by the court and defendant's counsel excepted to said ruling.

Thereupon the witness testified that it was so put in; it was included in the tax of 1861.

On cross-examination said witness testified that when he said that sum of $400 was included in the tax for 1861, he meant
59 that it was estimated as a sum necessary to be raised to pay county liabilities; that is the board figured up the amount required for the contingent fund, for general county expenses. It came under the head of general county expenses, general fund, or contingent fund. They sat down the items, including the $400 and figured up to see how much was wanted.

Plaintiff's counsel offered and read in evidence the record of the board of supervisors for 1861, showing that the only action of the board, providing for the raising of a general fund, was a resolution adopted at the annual meeting, as follows:

"Resolved that a tax of six and one-half mills on the dollar be raised on the taxable property of Marquette and Schoolcraft counties for the contingent fund, to defray the general expenses of the county."

The witness testified that they ascertained that that would be about the amount they wanted to raise to cover the necessary disbursements. He could not say that would be just the amount, including this $400. He had no doubt they figured it in round numbers. He could not say that the six and a half mills on a dollar would come within one, two, or five hundred dollars of what was estimated. He could not say that it was as much as they estimated, but presumed it was a little more. All he could say about it was that the board estimated and figured up the amount of money they thought they would need for contingent fund, and found that it amounted to somewhere near six and a half mills on a dollar, and voted to raise that amount of money. He thought it was done that way, though he had no definite recollection as to that resolution.

The entire record of proceedings of the board of supervisors for 1861, was put in evidence, and showed no vote or order to
60 raise a tax for the $400 appropriated to Judge Goodwin, other than the vote to raise a contingent fund of six and a half mills on a dollar, above quoted.

Plaintiff's counsel further offered evidence to show that a warrant was drawn in favor of Judge Goodwin, July 5th, 1862, upon the treasurer, for said sum of $400, and that the sum was paid.

Defendant's counsel objected thereto as irrelevant, but said objection was overruled by the court and defendant's counsel excepted. Said evidence was then given:

Plaintiff's counsel then offered and read in evidence records of the proceedings of the board of supervisors of Marquette county, for each of the years 1861, 1865, 1866 and 1867, the same being all that appeared in said proceedings relating to the equalization of the assessment rolls of the several townships, and the voting and the apportionnent of state and county taxes for each of said years, as follows:

61 At an adjourned meeting of the board of supervisors held at the office of the county clerk, at the court-house, on Monday, October 21st, 1861, were present: James P. Pendill, supervisor Marquette t'p; J. W. Edwards, supervisor Chocolay t'p; Henry C. Colwell, supervisor Negaunee t'p; M. H. Maynard, clerk.

The several supervisors presented the assessment rolls of their respective townships for revision and equalization. The assessment roll for the county of Schoolcraft, made by the assessors heretofore appointed for that purpose, was also presented.

The roll of the township of Marquette, as made by the supervisor, showed the aggregate value of the taxable real and personal prop-

erty of that township to be six hundred twenty-five thousand one hundred and seventy-two dollars and ninety-nine cents, which was left unchanged ---------- $624,172 99

The valuations of like property in the township of Chocolay, made by the supervisor, was one hundred twenty-six thousand two hundred and twenty dollars, which was also left unchanged ---------- 126,220 00

The valuation of like property in the township of Negaunee, made by the supervisor, was two hundred sixty-four thousand three dollars and thirty-seven cents, to which was added an increased valuation on the real estate of thirteen thousand two hundred dollars and thirteen cents, making the aggregate for said township ---------- 277,203 53

62 The valuations made by the assessors of Schoolcraft county were left unchanged, as made by them, at the sum of ---------- 258,368 63

1,285,965 15

Whereupon the aggregate valuation of the taxable real and personal property of the county was determined to be one million two hundred eighty-five thousand nine hundred sixty-five dollars and fifteen cents.

The subject of additional compensation to Judge Goodwin being under consideration, on motion of —— ——, it was resolved, That all former action of the board on this subject be rescinded and that the sum of four hundred dollars be paid to Judge Goodwin in orders on the treasurer of this county, upon his signing a receipt in full of all demands against the county on such account, up to the first day of January, A. D. 1862; such receipt to be filed with the clerk before such orders are issued.

On motion it was resolved that a tax of six and one-half mills on the dollar be raised on the taxable property of Marquette and Schoolcraft counties for the contingent fund, to defray the general expenses of the county.

The county treasurer not being present with his accounts and being absent from the county, on motion the board adjourned to meet on Monday, 4th November next, at 9 a. m.

M. H. MAYNARD, *Clerk.*

The State and county taxes were apportioned as follows:

To the township of Marquette, State tax ---------- $1,310 27
" " " " " county " ---------- 4,056 43
" Negaunee, State ----------
" county ----------
Chocolay, State ----------
" county ----------

M. H. MAYNARD, *Clerk.*

J. P. PENDILL, *Chairman.*

63 At the annual meeting of the board of supervisors of county of Marquette held at the clerk's office in the village of Marquette on Monday, the 9th day of October, A. D. 1865, there were present: Wm. P. Healy, ch'm., supervisor of Negaunee; Dan. H. Ball, supervisor of Marquette; Wm. G. Boswell, supervisor of Chocolay, and C. M. W. Earle, county clerk.

Board adjourned to 2 p. m. to-morrow.

OCTOBER 10TH—2 p. m.

Present: Wm. P. Healy, Negaunee; Dan. H. Ball, Marquette; Wm. G. Boswell, Chocolay, and C. M. W. Earle, county clerk.

Board adjourned to 8 a. m. to-morrow.

OCTOBER 11TH—8 a. m.

Present: William P. Healy, Negaunee; Dan. H. Ball, Marquette; William G. Boswell, Chocolay, and C. M. W. Earle, county clerk.

The assessment rolls of the several townships and of the county of Schoolcraft were presented for correction and equalization.

After examination the same were equalized by deducting from the valuation of real estate in the township of Marquette $100,000, and from Chocolay $42,000 of the amount of the assessment as made by the supervisors, leaving the rolls of the township of Negaunee and Schoolcraft county unchanged, as follows:

64 The aggregate valuation of real and personal property in the township of Marquette was determined to be six hundred and thirteen thousand six hundred and twenty-five dollars $613,625 00

The aggregate in the township of Negaunee was determined to be five hundred and seventy thousand one hundred and seventy dollars 570,170 00

The aggregate in the township of Chocolay was determined to be one hundred and one thousand nine hundred and fifty-eight dollars 101,958 00

The aggregate in Schoolcraft county was determined to be one hundred and seventy-four thousand five hundred and eighty dollars 174,580 00

Total, $1,460,333 00

Whereupon the aggregate valuation of the real and personal property of the county was determined to be one million four hundred and sixty thousand three hundred and thirty-three dollars.

On motion of Dan. H. Ball it was resolved that the sum of three thousand seven hundred and thirty-four dollars and seven cents ($3,334.07) be raised upon the taxable property of Marquette and Schoolcraft counties, the same being amount of the State tax apportioned to the said counties the present year, and that the apportionment of the said tax be as follows:

Township of Marquette	$1,567 41
" " Negaunee	1,457 50
" " Chocolay	260 81
County of Schoolcraft	448 35
	$3,734 07

On motion it was voted that a tax of one cent on each
65 dollar of the valuation, as determined by the board, of which $3,500 shall be set apart as a poor fund, $1,000 as a fund applicable to the construction or repair of roads, bridges, and public buildings, and the balance as a fund for general expenses, be levied and raised as a county tax, apportioned as follows:

Township of Marquette	$6,136 25
" " Negaunee	5,701 70
" " Chocolay	1,019 58
County of Schoolcraft	1,745 80
Total,	$14,603 33

66 At a meeting of the board of supervisors for the county of Marquette, on Monday, the 11th day of June, A. D. 1866, there were present: Wm. P. Healy, supervisor of Negaunee; Samuel P. Ely, supervisor of Marquette; David Preston, supervisor of Chocolay, and C. M. W. Earle, county clerk,

The assessment rolls of the several townships and of the county of Schoolcraft were presented for correction and equalization. After examination the same were equalized by deducting from the valuation of real estate in the township of Chocolay $11,195 of the amount of assessment as made by the supervisor, leaving the rolls of Marquette and Negaunee townships and Schoolcraft county unchanged as follows:

The aggregate valuation of real estate and personal property in the township of Marquette was determined to be five hundred and sixteen thousand four hundred and twenty-five dollars	$516,425 00
The aggregate in the township of Negaunee was determined to be three hundred and seventy-two thousand seven hundred and five dollars	372,705 00
The aggregate in the township of Chocolay was determined to be one hundred thousand dollars	100,000 00
The aggregate in Schoolcraft county was determined to be one hundred and thirty-nine thousand six hundred and sixty-four dollars	139,664 00
Total,	$1,128,794 00

Whereupon the aggegate valuation of the real and personal property of the county was determined to be one million one hundred and twenty-eight thousand seven hundred and ninety-four dollars ($1,128,794).

Whereupon the board adjourned until June 18th, 2 o'clock p. m.

C. M. W. EARLE, *Clerk.*

W. P. HEALY, *Chairman.*

67 At the annual meeting of the board of supervisors of the county of Marquette held at the clerk's office, in the village of Marquette, on Monday, the 8th day of October, A. D. 1866, there were present: Wm. P. Healy, ch'm'n, supervisor of Negaunee; S. P. Ely, supervisor of Marquette; David Preston, supervisor of Chocolay, and Stephen Rice, deputy county clerk.

On motion it was resolved that the sum of four thousand two hundred and forty-six dollars be raised upon the taxable property of Marquette and Schoolcraft counties, the same being amount of the State tax apportioned on said counties the present year, and that the apportionment of the said tax be as follows:

Township of Marquette	$2,183 08
" " Negaunee	1,012 03
" " Chocolay	438 82
County of Schoolcraft	612 70
Total,	$4,246 63

On motion of S. P. Ely the following taxes were voted to be raised for the current year: $5,000, specific tax for Keweenaw Bay State road, $3,000, tax for Marquette and Negaunee road; $14,577.88, as general tax. Total, $22,575.88, and apportioned as follows:

Marquette township	$10,328 50
Negaunee "	7,454 10
Chocolay "	2,000 00
Schoolcraft county	2,793 28
Total,	$22,575 88

Whereupon the board adjourned until the 13th of November, 1866.

STEPHEN RICE, *Deputy Clerk.*

W. P. HEALY, *Chairman.*

68 At the annual meeting of the board of supervisors of Marquette county held pursuant to adjournment, at the clerk's office in the village of Marquette, on Tuesday, the 15th day of October, A. D. 1867, there were present: Peter White, ch'm'n, supervisor of Marquette t'p; Wm. P. Healy, supervisor of Negaunee t'p; Wm. G. Boswell, supervisor of Chocolay t'p, and Stephen Rice, county clerk.

On motion the following resolution was adopted:

Whereas the assessment roll of the township of Negaunee is not complete, several descriptions of land in that township being omitted from said roll and other descriptions of land being on said roll which do not belong to said township, which arises from the decision of the Supreme Court, declaring the act organizing the county of Washington unconstitutional, therefore—

Resolved, That the supervisor of the township of Negaunee be, and he is hereby, directed and authorized to make out a new tax roll for the township of Negaunee and present the same for equalization to this board on the 25th day of October, 1867: Provided

due notice shall be given by public notices, written or printed, posted in twenty public places in said township five days in advance of the time and place when the supervisor will present said roll to be reviewed by all persons interested therein and all other proceedings taken and made as is required by law regulating the assessment rolls.

69 In the matter of equalizing the assessment rolls of the several townships for the year 1867, it appeared that the supervisor of the township of Negaunee had not made a proper roll, therefore the equalization of said rolls and the apportionment of the State and county taxes among the several townships was postponed until the twenty-fifth day of October, instant.

Whereupon the board adjourned to meet on the 25th day of October, 1867, at two o'clock p. m.

STEPHEN RICE, *Clerk.*

PETER WHITE, *Ch'm'n.*

70 At the annual meeting of the board of supervisors of Marquette county held pursuant to adjournment at the clerk's office, in the village of Marquette, on Friday, the 25th day of October, A. D. 1867, there were present: Matthew H. Maynard, supervisor of Marquette t'p; William P. Healy, supervisor of Negaunee t'p; L. D. Harvey, supervisor of Chocolay t'p, and Stephen Rice, county clerk.

The assessment rolls of the several townships and of the county of Schoolcraft were presented for correction and equalization, and without adding to or deducting from the valuations as made by the supervisors and assessors.

The aggregate valuation of real and personal property in the township of Negaunee was determined to be six hundred and fifty-two thousand eight hundred and thirty-five dollars	$652,835 00
The aggregate in the township of Chocolay was determined to be one hundred and seventy thousand six hundred dollars	170,600 00
The aggregate in the township of Marquette was determined to be six hundred and thirty-six thousand three hundred and seventy-seven dollars and fifty cents	636,377 50
The aggregate in the county of Schoolcraft was determined to be three hundred and ninety thousand seven hundred and fifteen dollars	390,715 00
Total,	$1,850,227 50

71 Whereupon the aggregate valuation of the real and personal property of the county was determined to be one million eight hundred and fifty-seven thousand five hundred and twenty-seven dollars and fifty cents,—$1,857,527.50.

On motion it was resolved that the sum — six thousand four hundred and twenty-seven dollars and twenty-five cents ($6,427.26) be raised upon the taxable property of Marquette and Schoolcraft

counties, the same being amount of the State tax apportioned to the said counties the present year, and that the apportionment of the State tax be as follows:

Township of Marquette	$2,924 26
" " Negaunee	1,560 00
" " Chocolay	586 00
County of Schoolcraft	1,360 00
Total,	$6,427 26

On motion it was resolved that the sum of nine thousand dollars ($9,000) be raised upon the taxable property of Marquette and Schoolcraft counties to defray the contingent expenses of this county for the ensuing year, and that the same be apportioned as follows:

Township of Marquette	$3,600 00
" " Negaunee	2,925 00
" " Chocolay	720 00
County of Schoolcraft	1,755 00
Total,	$9,000 00

EDWARD CAHILL, counsel for plaintiff, was sworn in behalf of the plaintiff, and, without being interrogated, testified as follows:

72 "The State tax apportioned to Marquette township for the year 1866 was $2,183.08. The amount which ought to have been apportioned rateably was $1,952.08, being an excess of $231. For the year 1867 the amount of State tax that was apportioned to Marquette township was $2,924.26. The amount which ought to have been apportioned rateably was $2,236.23, showing an excess of $688.03. The county tax apportioned to Marquette township was excessive by $516.66. The amount apportioned was $3,600; the amount which ought to have been apportioned was $3,083.34."

Defendant's counsel moved to strike out said evidence as incompetent; but plaintiff's counsel stated that the same could be verified by the records in evidence from which he took his figures, and therefore no ruling was made on said motion.

Defendant's counsel, in reply to the rebutting evidence of plaintiff, gave evidence tending to show that during the years 1866 and 1867 the only townships in Marquette county were Marquette, Negaunee, and Chocolay, and that the mining of iron ore was carried on at several large mines in the township of Negaunee by corporations organized under the general laws of Michigan for the formation of mining corporations, and also to some extent in the township of Marquette.

Evidence was also introduced by the defendant's counsel tending to show that the land in controversy exceeds in value the sum of five thousand dollars; which evidence was uncontradicted.

The foregoing contains a substantial statement of all the testimony introduced on the trial of said cause and a particular state-

ment of all the evidence given tending to impair or defeat the titles acquired by the defendant under sales for delinquent taxes.

The court thereupon charged the jury as follows:

GENTLEMEN OF THE JURY: As I understand this question it presents itself to you a mere matter of fact as to whether the sum in question for the year 1861 to Judge Goodwin and for the other years for different sums to Judge Eddie, was incorporated as an
73 item making up the sum of the tax for general purposes during those years or not. Whether this sum for '61 and the other sum for the other years were included or constituted an item to make up the amount of tax raised during those years that was actually levied.

The resolutions of the board of supervisors, introduced in evidence, shows that they voted to pay Judge Goodwin a given sum for the year 1861 and another given sum to Judge Eddy for the years '65, '66, '67 & '68. Not in that form, because I think the years were not mentioned, but "while he continues his office as circuit judge," and which, it seems to be conceded, would cover those different years.

These resolutions were, in effect, an appropriation annually of so much money for the purpose designated in the resolutions. That was the effect of those resolutions, and it was not only in effect an appropriation of that sum for those persons, but it was, in effect, an appropriation to pay to them for some purpose and for some object. The question is what the purpose and object was? Of course if they had valid claims against the county it would be entirely lawful and proper for the board of supervisors to vote to pay them such sum. If they had no valid claims against the county it is perfectly manifest, on the other hand, that the appropriations would be unlawful on the part of the board of supervisors. Still, the board of supervisors may have appropriated these sums of money unlawfully to these persons, and it may have been paid and might not vitiate this tax for these years. If, for instance, there was money in the treasury and the board of supervisors voted to pay it out for unlawful purposes, it would not invalidate a tax from which this
74 money was raised and came into the treasury. And so it becomes a question for the jury to determine whether, in pursuance of such resolutions, these sums were incorporated among the items that went to make up the tax for the general fund for the county. It is sometimes called a general fund and sometimes called a contingent fund.

Were these sums, in pursuance of the resolutions that have been introduced, levied as a tax and for the purpose, as claimed by the plaintiff, of paying salaries to these judges?

Now, this is the exact question that you are to determine.

You are to say from the evidence, and mainly from the evidence of Mr. Healy and Mr. Maynard, whether such sums for additional salary were annually, during the years that have been mentioned, actually included in the taxes and levied for the purposes claimed by the plaintiff in this case, to wit: to pay salaries in addition to the

salary which the State paid to those men as judges? If so, we instruct you that it was an unlawful levy of taxes and vitiated the tax, so far as the lands in question are concerned, for those years. So that no valid tax-title could exist upon these lands for the taxes for which they were sold as delinquent, which embraced and contained a sum or sums mentioned for those years, to pay the salary of those judges, because there was no law authorizing the board of supervisors to tax the people of this county for any such purpose. On the contrary it is prohibited, their salary being fixed.

Now, as to this testimony, it was of course proper for counsel to comment to you upon the effect of the testimony, but there is no testimony tending to contradict either Mr. Healy or Mr. May-
75 nard. If you believe their testimony, there can be no doubt as to what your verdict will be, viz: for the plaintiff—that is if you believe their testimony, and you think they are not mistaken in their recollection. It is competent for you to say that they cannot recollect this matter for all this length of time, but ordinarily we think that such testimony uncontradicted should be received by the jury.

You will take the case then, and find either for the plaintiff or defendant. The form of the verdict the clerk will give to you on recording the verdict.

Defendant's counsel then requested the court to charge the jury that unless it appears from the evidence that a sum of money was apportioned to particular descriptions or pieces of this land, larger than would have been, but for the raising of the $350 and the $400 unlawfully, then as to such pieces the raising of the unlawful tax would not vitiate the sale. That the title of the defendant to any piece of land cannot be found invalid unless that piece had a larger sum apportioned to it than it would have had but for the illegal levy, and that fact must appear from the evidence, and also that there was no evidence on that point.

But the court refused to so charge, and the defendant's counsel excepted to the refusal to charge as requested upon each of said propositions.

Said defendant's counsel also then and there excepted to the charge of the court to the effect that the validity of the title of
76 defendant would depend upon the question whether the money voted to the circuit judges by the resolutions of 1861 and 1865 were levied as a part of the tax for those years.

Also to the following portion of the charge of the court:

"You are to say from the evidence, and mainly from the evidence of Mr. Healy and Mr. Maynard, whether such sums for additional salary were annually, during the years that have been mentioned, actually included in the taxes levied for the purposes claimed by the plaintiff in this case, to wit: to pay salaries, in addition to the salary which the State paid to those men as judges? If so, we instruct you that it was an unlawful levy of taxes, and vitiated the tax, so far as the lands in question are concerned, for those years, so that no valid tax title could exist upon these lands for the taxes

for which they were sold as delinquent, which embraced and contained a sum or sums mentioned for those years to pay the salary of these judges."

And the said court, under the evidence aforesaid and under the charge and instructions aforesaid, left the said issue to the jury, and thereupon the said jury gave their verdict in favor of the said plaintiff and against the defendant; that the said defendant did unlawfully withhold said lands from the plaintiff, and assessed the plaintiff's damages at the sum of six cents; and further found that the lands in controversy exceeded in value the sum of five thousand dollars.

And because none of the exceptions so made appear on the record of said trial, on the request of the said plaintiff's counsel, the said district judge has settled and signed this bill of exceptions this first day of September, A. D. 1884.

S. L. WITHEY,
Dist. Judge.

77 EXHIBIT 1.

STATE OF MICHIGAN, } *ss:*
County of Marquette, }

Dan. H. Ball, being duly sworn, deposes and says that he is the publisher of the Lake Superior Journal, a weekly newspaper published at Marquette, in the county of Marquette and State of Michigan, and that a notice of tax sales, of which the annexed printed advertisement is a true copy, was duly published in said Lake Superior Journal once a week for eight week successively, next previous to the first Monday of October, A. D. 1862; and deponent further says that he has transmitted to each county treasurer of the said State of Michigan, by mail, copies of the first two numbers of said Lake Superior Journal containing such statements, immediately after their publication.

DAN. H. BALL.

Subscribed and sworn to before me this 7th day of October, A. D. 1862.

P. M. EVERETT,
Notary Public.

Sale of State Tax Lands.

AUDITOR GENERAL'S OFFICE,
LANSING, MICH., *July* 1, 1862.

Notice is hereby given that certain lands, situated in the county of Marquette, bid off to the State for taxes of 1860 and previous years, and described in statements which will be forwarded to the office of the treasurer of said county some time next month, will be sold at public auction, by said treasurer, at the county seat, on the first Monday of October next, at the time and place designated for the ordinary tax sales, if not previously disposed of at this office, according to law.

78 Said statements contain a full description of each parcel of said lands, and may be seen on application at the office of the county treasurer.

Lands struck off to the State for taxes of 1860 or other years, at the tax sales in October last, will be offered subject to the right of redemption prescribed by law, as well as to the right of purchase of the State bids at this office, prior to the sale.

LANGFORD G. BERRY,
Auditor General.

Annual Tax Sales.

AUDITOR GENERAL'S OFFICE,
LANSING, MICH., *July* 1, 1862.

So much of each of the following described tracts or parcels of land, situated in the county of Marquette, delinquent for unpaid taxes for the years mentioned below, as will be sufficient to pay the taxes, interest, and charges thereon, will be sold by the treasurer of said county, on the first Monday of October next, at such public and convenient place as he shall select in Marquete, the county seat of said county, according to the statute in such case made and provided.

LANGFORD G. BERRY,
Auditor General.

79 EX. A.—1861.—*Town.* 5 *North of Range* 29 *West.*

	Sec.	Acres.	Taxes.	Interest.	Charges.	Total.
S. H. of	8	320	8.88	.88	.90	10.66
S. E. Q. of	9	160	4.44	.44	.90	5.78
N. W. Q. of S. W. Q.	9	40	1.11	.11	.90	2.12
S. E. Q. of S. W. Q.	9	40	1.11	.11	.90	2.12
E. H. and S. H. of N. E. Q. and S. E. Q. of N. W. Q.	10	440	12.21	1.22	.90	14.33
N. H. of	15	320	8.88	.88	.60*	10.66
N. H. of	17	320	8.88	.88	.90	10.66
Lot No. 1 of	18	56	1.55	.15	.90	2.60
Lot No. 4 of	18	52.20	1.46	.14	.90	2.50

* The figures "60" in the column of charges in the seventh line was made before signing by the proper officer of this office.

H. R. PRATT,
Dep'ty Auditor General.

80 EXHIBIT 2.—*Statement of lands upon which taxes are unpaid for the year* 1861, *in Township No.* 45, *Range No.* 29, *Marquette, Marquette County.*

[N. B.—County treasurers will reject all indefinite or defective descriptions.—*See Section* 54, *Act* 169, *Laws of* 1869. Part-paid State lands should not be returned to this office.—*See Section* 151, *Act* 169, *Laws of* 1869.]

Whenever an organized township embraces more than one surveyed town, all lands in each surveyed town should be entered separately, according to their number and range. Let the sections be introduced in numerical order.—*Auditor General's Office*, 1877.]

NAME.	SUBDIVISION OF SECTIONS.	SECT'N.	NO. OF ACRES.	VALUA'N.	STATE TAX.	COUNTY TAX.	TOWN TAX.	SCHOOL TAX.	TOTAL AMOUNT.
			Acrs. 100ths	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.
Manning & Wright	S½	8	320	800	1 68	5 20	40	1 60	8 88
" "	E½	9	320	800	1 68	5 20	40	1 60	8 88
" "	N. W. ¼ of S. W. ¼	"	40	100	21	65	5	20	1 11
" "	S. E. ¼ of S. W. ¼	"	40	100	21	65	5	20	1 11
" "	Whole	10	640	1,600	3 36	10 40	80	3 20	17 76
" "	N. ½	15	320	800	1 68	5 20	40	1 60	8 88
" "	N. ½	17	320	800	1 68	5 20	40	1 60	8 88
" "	Lot No. 1	18	56	140	29	91	7	28	1 55
" "	" " 4	"	52 20	130 50	27	86	7	26	1 46

COUNTY TREASURER'S OFFICE,
MARQUETTE, *April* 10, 1862.

I hereby certify, that I have examined the foregoing statement, made by B. Gillett, treasurer of the township of Marquette, and I have compared the same with the assessment roll in the hands of said township treasurer, and have found the same to be correct, and a true transcript of so much thereof as is by him returned unpaid.

Rec'd April 24th, 1862.

EZRA JONES, *Depy. Aud. Genl.*

P. M. EVERETT,
Treasurer of Marquette County.

STATE OF MICHIGAN, } ss:
County of Marquette, }

M. H. Maynard, county clerk of the county aforesaid, do hereby certify that I have examined and compared the annexed transcript with the certified statement of B. Gillett, treasurer of the township of Marquette, in said county, and have found the same to be correct.

M. H. MAYNARD, *County Clerk.*

81 EXHIBIT 3.

Statement of Lands in Town. No. 45, Range No. 29, in Marquette County, sold October 6, 1862, for Unpaid Taxes of 1861.

Description advertised.	Sec'n ?	Acres.	Amount due.	Amount on bids for State.
S. 1-2	8	320	10 66	10 66
N. W. 1-4 of S. W. 1-4	9	40	2 12	2 12
S. E. 1-4 of S. W. 1-4	9	40	2 12	2 12
S. 1-2 & S. 1-2 of N. E. 1-4 & S E. 1-4 of N. W. 1-4	10	440	14 33	14 33
N. 1-2 of	15	320	10 66	10 66
N. 1-2 of	17	320	10 66	10 66
Lot No. 1	18	56	2 60	2 60
Lot No. 4	18	52.20	2 50	2 50

TREASURER'S OFFICE, MARQUETTE COUNTY,
MARQUETTE, *October* 6, 1862.

I hereby certify that in the foregoing transcript of sales for taxes of 1861 and previous years, in all cases where the amount belonging to any description is placed in the column headed "Amount on bids for State," that such descriptions were bid off to the State by me according to law. Also, that those descriptions marked "Withheld" were withheld from sale by me for the reasons written opposite to them, respectively.

P. M. EVERETT,
Treasurer of Marquette County.

82 EXHIBIT 4.

STATE OF MICHIGAN, } *ss:*
County of Marquette, }

Alexander Ewart, being duly sworn, deposes and says that he is the printer of the Lake Superior Mining Journal, a weekly newspaper published at Marquette, in the county of Marquette and State of Michigan, and that a notice of tax sales, of which the annexed printed advertisement is a true copy, was duly published in said Lake Superior Mining Journal once a week for eight weeks successively, next previous to the first Monday of October, A. D. 1866; and deponent further says that he has transmitted to each county treasurer of the State of Michigan, by mail, copies of the first two numbers of said Lake Superior Mining Journal containing such statements, immediately after their publication.

ALEXANDER EWART.

Subscribed and sworn to before me this 8th day of October, 1866.

C. M. W. EARL,
Notary Public.

(U. S. Revenue Stamp for 5 cents.)

See section 80, tax laws of 1858.

Sale of State Tax Lands.

AUDITOR GENERAL'S OFFICE,
LANSING, MICH., *July 2d*, 1886.

Notice is hereby given that certain lands, situated in the county of Marquette, bid off to the State for taxes of 1864 and previous years, and described in statements which will forwarded to the office of the treasurer of said county some time next month, will be sold at public auction, by said treasurer, at the county
83 seat, on the first Monday of October next, at the time and place designated for the ordinary tax sales, if not previously disposed of at this office, according to law.

Said statements contain a full description of each parcel of said lands, and may be seen on application at the office of the county treasurer.

Lands struck off to the State for taxes of 1864 or other years, at the tax sales in October last, will be offered, subject to the right of redemption prescribed by law, as well as to the right of purchase of the State, bids at this office, prior to the sale.

EMILE ANNEKE,
Auditor General.

Annual Tax Sales.

AUDITOR GENERAL'S OFFICE,
LANSING, MICH., *July* 2, 1866.

So much of each of the following described tracts or parcels of lands, situated in the county of Marquette delinquent for unpaid taxes for the years mentioned below, as will be sufficient to pay the taxes, interest and charges thereon, will be sold by the treasurer of said county, on the first Monday of October next, at such public and convenient place as he shall select in Marquette, the county seat of said county, according to the statute in such case made and provided.

EMILE ANNEKE,
Auditor General.

84 1865.—*Town.* 45 *North of Range* 29 *West.*

	Sec.	Acres.	Taxes.	Interest.	Charges.	Total.
S. H'f. of	8	320	6.80	.68	1.00	8.48
N. W. Q. of S. W. Q.	9	40	.85	.08	1.00	1.93
S. E. Q. of S. W. Q.	9	40	.85	.08	1.00	1.93
E. H'f. & S. H'f. of N. E. Q. & S. E. Q. of N. W. Q.	10	440	9.35	.93	1.00	11.28
N. H'f. of	15	319.50	6.80	.68	1.00	8.48
N. H'f. of	17	320	6.80	.68	1.00	8.48
Lots 1 and 4.	18	106.30	2.12	.21	1.00	3.33

EXHIBIT 5.—*Statement of lands upon which taxes are unpaid for the year* 1865, *in Township No.* 45 *N., Range No.* 29 *W., Marquette County.*

[N. B.—County treasurers will reject all indefinite or defective descriptions.—*See Section* 54, *Act* 169, *Laws of* 1869. Part-paid State lands should not be returned to this office.—*See Section* 151, *Act* 169, *Laws of* 1869.]

[Whenever an organized township embraces more than one surveyed town, all lands in each surveyed town should be entered separately, according to their number and range. Let the sections be introduced in numerical order.—*Auditor General's Office*, 1877.]

NAME.	SUBDIVISION OF SECTIONS.	SECT'N.	NO. OF ACRES.	VALUA'N.	STATE TAX.	COUNTY TAX.	TOWN TAX.	SCHOOL TAX.	TOTAL AMOUNT.
			Acrs. 100ths	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.
----------	S ½ of ----------	8	320	400	88	3 44	1 68	80	6 80
----------	E ½ of ----------	9	320	400	88	3 44	1 68	80	6 80
----------	N. W. ¼ of S. W. ¼ ----	"	40	50	11	43	21	10	85
----------	S. E. ¼ of S. W. ¼ ----	"	40	50	11	43	21	10	85
----------	Whole ----------	10	640	800	1 76	6 88	3 36	1 60	13 60
----------	N. ½ of ----------	15	319 50	400	83	3 44	1 68	80	6 80
----------	N. ½ of ----------	17	320	400	83	3 44	1 68	80	6 80
----------	Lots 1, 4, 5, & 8 ----	18	212 60	250	55	2 15	1 05	50	4 25

STATE OF MICHIGAN, *County of Marquette, ss:*

August Machts, treasurer of the township of Marquette, in said county of Marquette, being duly sworn, says the sums mentioned in the foregoing or annexed statement remain unpaid, and that this deponent has not, upon diligent inquiry, been able to discover any goods or chattels belonging to persons charged with or liable to pay said sums, whereon he could levy the same. A. MACHTS.

Sworn to and subscribed before me this 7th day of February, A. D. 1866.

M. H. MAYNARD, *Notary Public, Marquette, Marquette County.*

COUNTY TREASURER'S OFFICE, *February 7th*, 1866.

I hereby certify, that I have examined the foregoing statement made by August Machts, treasurer of the township of Marquette, and that I have compared the same with the tax roll in the hands of said township treasurer, and have found the same to be correct, and a true transcript of so much thereof as is by him returned unpaid. M. H. MAYNARD, *Deputy Treasurer of Marquette County.*

STATE OF MICHIGAN, *County of Marquette, ss:*

I, Charles M. W. Earle, county clerk of the county aforesaid, do hereby certify that I have examined and compared the annexed transcript with the certified statement of August Machts, treasurer of the township of Marquette, in said county, and have found the same to be correct.

C. M. W. EARLE, *County Clerk.*

86 EXHIBIT 6.—*Statement of Lands in Town. No. 45 North, Range 29 West, in Marquette County, sold October 1, 1866, for Unpaid Taxes of 1865.*

No. of certificate.	Description advertised.	Sec'n.	Acres.	Amount due.	Amount sold for.	By whom paid or to whom sold.	P. O. address of purchaser.
66	S. 1-2 of	8	320	8 48	8 48	Henry D. Smith	Marquette.
67	N. W. 1-4 of S. W. 1-4	9	40	1 93	1 93	do.	
68	S. E. 1-4 of S. W. 1-4	9	40	1 93	1 93	do.	
69	S. 1-2 of S. 1-2 of N. E. 1-4 & S. E. 1-4 of N. W. 1-4	10	440	11 28	11 28	do.	
70	N. 1-2 of	15	319.50	8 48	8 48	do.	
71	N. 1-2 of	17	320	8 48	8 48	do.	
72	Lots No. 1 & 4	18	106.30	3 33	3 33	do.	

TREASURER'S OFFICE, MARQUETTE COUNTY,
MARQUETTE, *October 1st*, 1866.

I hereby certify that in the foregoing transcript of sales for taxes of 1865 and previous years, in all cases where the amount belonging to any description is placed in the column headed "Amount on bids for State," that such descriptions were bid off to the State by me according to law. Also, that those descriptions marked "Withheld" were withheld from sale by me for the reasons written opposite to them, respectively.

M. H. MAYNARD,
Deputy Treasurer of Marquette County.

87 EXHIBIT 7.

STATE OF MICHIGAN, } ss:
County of Marquette, }

James R. Hosmer, being duly sworn, deposes and says that he is the publisher of the Lake Superior Mining Journal, a weekly newspaper published at Marquette, in the county of Marquette and State of Michigan, and that a notice of tax sales, of which the annexed printed advertisement is a true copy, was duly published in said Lake Superior Mining Journal once a week for eight weeks successively, next previous to the first Monday of October, A. D. 1867; and deponent further says that he has transmitted to each county treasurer of the State of Michigan, by mail, copies of the first two numbers of said Lake Superior Mining Journal containing such statements, immediately after their publication.

JAMES R. HOSMER.

Subscribed and sworn to before me this 14th day of October, 1867.

PETER WHITE,
Notary Public, Marquette Co., Mich.

(U. S. Revenue Stamp for 5 cents.)

See section 80, tax laws of 1858.

Sale of State Tax Lands.

AUDITOR GENERAL'S OFFICE,
LANSING, MICH., *July* 1, 1867.

Notice is hereby given that certain lands, situated in the county of Marquette, bid off to the State for taxes of 1865, and previous years, and described in statements which will be forwarded to the office of the treasurer of said county some time next month, will be sold at public auction, by said treasurer, at the county seat,
88 on the first Monday of October next, at the time and place designated for the ordinary tax sales, if not previously disposed of at this office, according to law.

Said statements contain a full description of each parcel of said lands, and may be seen on application at the office of the county treasurer.

Lands struck off to the State for taxes for 1865, or other years, at the tax sales in October last, will be offered subject to the right of redemption prescribed by law, as well as to the right of purchase of the State bids at this office, prior to the sale.

WM. HUMPHREY,
Auditor General.

Annual Tax Sales.

AUDITOR GENERAL'S OFFICE,
LANSING, MICH., *July* 1, 1867.

So much of each of the following described tracts or parcels of land, situated in the county of Marquette delinquent for unpaid

taxes, for the years mentioned below, as will be sufficient to pay the taxes, interest and charges thereon, will be sold by the treasurer of said county, on the first Monday of October next, at such public and convenient place as he shall select in Marquette, the county seat of said county, according to the statute in such case made and provided.

WM. HUMPHREY,
Auditor General.

89 1866.—*Town.* 45 *North of Range* 29 *West.*

	Sec.	Acres.	Taxes.	Interest.	Charges.	Total.
S. 1-2	8	320	16.52	1.65	1 00	19 17
S. E. 1-4	9	160	8.26	.82	1 00	10 08
S. E. 1-4 S. W. 1-4	9	40	2.07	.20	1 00	3 27
S. 1-2	10	320	16.52	1.65	1 00	19 17
S. 1-2 N. E. 1-4	10	80	4.13	.41	1 00	5 54
S. E. 1-4 N. E. 1-4	10	40	2.07	.20	1 00	3 27
N. 1-2	15	319.51	16.52	1.65	1 00	19 17
N. 1-2	17	320	16.52	1.65	1 00	19 17
Lots 1, 4, 6	18	135.70	7.25	.72	1 00	8 97

NOTICE.—The annual tax sales for the county of Marquette will take place on the first Monday of October, 1867, at 9 o'clock a. m., at the county treasurer's office. The sales will be continued from day to day until the whole is disposed of.

JAMES MATTHEWS,
County Treasurer.

EXHIBIT 8.—*Statement of lands upon which taxes are unpaid for the year* 1866, *in Township No.* 45 *N., Range No.* 29 *W., Marquette County.*

[N. B.—County treasurers will reject all indefinite or defective descriptions.—*See Section* 54, *Act* 169, *Laws of* 1869. Part-paid State lands should not be returned to this office.—*See Section* 151, *Act* 169, *Laws of* 1869.]

[Whenever an organized township embraces more than one surveyed town, all lands in each surveyed town should be entered separately, according to their number and range. Let the sections be introduced in numerical order.—*Auditor General's Office*, 1877.]

NAME.	SUBDIVISION OF SECTIONS.	SECT'N.	NO. OF ACRES.	VALUA'N.	STATE TAX.	COUNTY TAX.	TOWN TAX.	ROAD TAX.	SCHOOL TAX.	TOTAL AMOUNT.
			Acrs. 100ths	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.
John Noble	S. ½ of	8	320	400	1 72	8 00	2 00	4 00	80	16 52
Manning & Wright	S. E. ¼ of	9	160	260	86	4 00	1 00	2 00	40	8 26
John Noble	S. E. ¼ of S. W. ¼	"	40	50	22	1 00	25	50	10	2 07
Manning & Wright	S. ½ of	10	320	400	1 72	8 00	2 00	4 00	80	16 52
	S. ½ of N. E. ¼	"	80	100	43	2 00	50	1 00	20	4 13
	N. ½ of	15	319 51	400	1 72	8 00	2 00	4 00	80	16 52
	N. ½ of	17	320	400	1 72	8 00	2 00	4 00	80	16 52
	Lots 1, 4, 6, & 8	18	212 60	250	1 08	5 00	1 25	2 50	50	10 33

(Copy.) STATE OF MICHIGAN, *County of Marquette, ss:*

John B. Johnson, treasurer of the township of Marquette, in said county of Marquette, being duly sworn, says the sums mentioned in the foregoing or annexed statement remain unpaid, and that this deponent has not, upon diligent inquiry, been able to discover any goods or chattels belonging to the persons charged with or liable to pay said sums, whereon he could levy the same. JOHN B. JOHNSON.

Sworn to and subscribed before me this 14th day of February, A. D. 1867.

HENRY D. SMITH, *Deputy County Treasurer.*

(Copy.) COUNTY TREASURER'S OFFICE, MARQUETTE, *February* 14*th*, 1867.

I hereby certify that I have examined the foregoing statement made by John B. Johnson, treasurer of the township of Marquette, and that I have compared the same with the tax roll in the hands of said township treasurer, and have found the same to be correct, and a true transcript of so much thereof as is by him returned unpaid. HENRY D. SMITH, *Deputy Treasurer of Marquette County.*

STATE OF MICHIGAN, *County of Marquette, ss:*

I, Stephen Rice, county clerk of the county aforesaid, do hereby certify that I have examined and compared the annexed transcript with the certified statement of John B. Johnson, treasurer of the township of Marquette, in said county, and have found the same to be correct.

STEPHEN RICE, *County Clerk.*

91 EXHIBIT 9.

Statement of Lands in Town. No. 45 *North, Range No.* 29 *West, in Marquette County, sold October* 7, 1867, *for Unpaid Taxes of* 1866.

Description advertised.	Section ?	Acres.	Amount due.	Amount on bids for State.
S. 1-2 of	8	320	19 17	19 17
S. E. 1-4 of	9	160	10 08	10 08
S. E. 1-4 of S. W. 1-4	9	40	3 27	3 27
S. 1-2 of	10	320	19 17	19 17
S. 1-2 of N. E. 1-4	10	80	5 54	5 54
S. E. 1-4 of N. E. 1-4	10	40	3 27	3 27
N. 1-2 of	15	319.51	19 17	19 17
N. 1-2 of	17	320	19 17	19 17
Lots 1, 4, 6	18	135.70	8 97	8 97

TREASURER'S OFFICE, MARQUETTE COUNTY,
MARQUETTE, *October* 7, 1867.

I hereby certify that in the foregoing transcript of sales for taxes of 1866 and previous years, in all cases where the amount belonging to any description is placed in the column headed "Amount on bids for State," that such descriptions were bid off to the State by me according to law. Also, that those descriptions marked "Withheld" were withheld from sale by me for the reasons written opposite to them, respectively.

HENRY D. SMITH,
Dep. Treasurer of Marquette County.

92 EXHIBIT 10.

STATE OF MICHIGAN, }
County of Marquette, } *ss:*

Frederick W. Root, being duly sworn, deposes and says that he is the publisher of the Marquette Weekly Plaindealer, a weekly newspaper published at Marquette, in the county of Marquette and State of Michigan, and that a notice of tax sales, of which the annexed printed advertisement is a true copy, was duly published in said Marquette Weekly Plaindealer once a week for eight weeks successively, next previous to the first Monday of October, A. D. 1868; and deponent further says that he has transmitted to each county treasurer of the State of Michigan, by mail, copies of the first two numbers of

said Marquette Weekly Plaindealer containing such statements, immediately after their publication.

FRED. W. ROOT.

Subscribed and sworn to before me this 28th day of October, 1868.

HENRY D. SMITH,
Notary Public, Marquette Co., Michigan.

(U. S. Revenue Stamp for 5 cents.)

See section 80, tax laws of 1858.

Sale of State Tax Lands.

AUDITOR GENERAL'S OFFICE,
LANSING, MICH., *July* 1, 1868.

Notice is hereby given that certain lands, situated in the county of Marquette, bid off to the State for taxes of 1866 and previous years, and described in statements which will forwarded to the office of the treasurer of said county some time next month, will be sold at public auction, by said treasurer, at the county seat,
93 on the first Monday of October next, at the time and place designated for the ordinary tax sales, if not previously disposed of at this office, according to law.

Said statements contain a full description of each parcel of said lands, and may be seen on application at the office of the county treasurer.

Lands struck off to the State for taxes of 1866 or other years, at the tax sales in October last, will be offered, subject to the right of redemption prescribed by law, as well as to the right of purchase of the State, bids at this office, prior to the sale.

WILLIAM HUMPHREY,
Auditor General.

Annual Tax Sales.

AUDITOR GENERAL'S OFFICE,
LANSING, MICH., *July* 1, 1868.

So much of each of the following described tracts or parcels of land, situated in the county of Marquette, delinquent for unpaid taxes for the years mentioned below, as will be sufficient to pay the taxes, interest, and charges thereon, will be sold by the treasurer of said county, on the first Monday of October next, at such public and convenient place as he shall select in Marquette, the county seat of said county, according to the statute in such case made and provided.

WILLIAM HUMPHREY,
Auditor General.

94 1867.—*Town.* 45 *North of Range* 29 *West.*

	Sec.	Acres.	Taxes.	Interest.	Charges.	Total.
S. 1-2	8	320	7.12	.71	1.00	8.83
S. E. 1-4	9	160	3.56	.35	1.00	4.91
S. E. 1-4, S. W. 1-4	9	40	.89	.08	1.00	1.97
N. W. 1-4, S. W. 1-4	9	40	.89	.08	1.00	1.97
S. 1-2	10	320	7.12	.71	1.00	8.83
S. 1-2, N. E. 1-4	10	80	1.78	.17	1.00	2.95
S. E. 1-4, N. W. 1-4	10	40	.89	.08	1.00	1.97
N. 1-2	15	319.20	7.12	.71	1.00	8.83
N. 1-2	17	320	7.12	.71	1.00	8.83
Lots 1 and 4	18	108.20	2.27	.22	1.00	3.49

Notice is hereby given that the sale of lands in Marquette county, advertised by the auditor general as delinquent for taxes of 1867 and previous years, will be held at the office of Wilkinson and Smith, in the village of Marquette, the county seat of said county, commencing on Monday, the 5th day of October next, at nine o'clock a. m., and continue from day to day, Sundays excepted, until the same shall have been disposed of according to law.

HENRY D. SMITH,
Deputy County Treasurer.

EXHIBIT 11.—*Statement of lands upon which taxes are unpaid for the year* 1867, *in Township No.* 45, *Range No.* 29 *W., Marquette County.*

[N. B.—County treasurers will reject all indefinite or defective descriptions.—*See Section* 54, *Act* 169, *Laws of* 1869. Part-paid State lands should not be returned to this office.—*See Section* 151, *Act* 169, *Laws of* 1869.]

[Whenever an organized township embraces more than one surveyed town, all lands in each surveyed town should be entered separately, according to their number and range. Let the sections be introduced in numerical order.—*Auditor General's Office*, 1877.]

NAME.	SUBDIVISION OF SECTIONS.	SECT'N.	NO. OF ACRES.	VALUA'N.	STATE TAX.	COUNTY TAX.	TOWN TAX.	SCHOOL TAX.	TOTAL AMOUNT.
			Acrs. 100ths.	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.	Dolls. Cts.
John Noble	S. ½	8	320	400	1 84	2 28	2 20	80	7 12
Manning & Wright	S. E. ¼	9	160	200	92	1 14	1 10	40	3 56
John Noble	S. E. ¼ of S. W. ¼	"	40	50	23	28	28	10	89
	N. W. ¼ of S. W. ¼	"	40	50	23	28	28	10	89
Manning & Wright	S. ½ of	10	320	400	1 84	2 28	2 20	80	7 12
	S. ½ of N. E. ¼	"	80	100	46	57	55	20	1 78
	S. E. ¼ of N. W. ¼	"	40	50	23	28	28	10	89
Manning & Wright	N. ½ of	15	319 20	400	1 84	2 28	2 20	80	7 12
	N. ½ of	17	320	400	1 84	2 28	2 20	80	7 12
	Lots 1, 4, 5, 8	18	212 60	250	1 15	1 42	1 38	50	4 45

STATE OF MICHIGAN, *County of Marquette, ss*:

John B. Johnson, treasurer of the township of Marquette, in said county of Marquette, being duly sworn, says the sums mentioned in the foregoing or annexed statement remain unpaid, and that this deponent has not, upon diligent injury, been able to discover any goods or chattels belonging to the persons charged with or liable to pay said sums, whereon he could levy the same. JOHN B. JOHNSON.

Sworn and subscribed before me this 11th day of February, A. D. 1868. HENRY D. SMITH, *Notary Public, Marquette Co.*

COUNTY TREASURER'S OFFICE, MARQUETTE, *Feb. 11th*, 1868.

I hereby certify that I have examined the foregoing statement, made by John B. Johnson, treasurer of the township of Marquette, and that I have compared the same with the tax roll in the hands of said township treasurer, and have found the same to be correct, and a true transcript of so much thereof as is by him returned unpaid. HENRY D. SMITH, *Dep. Treasurer of Marquette County.*

STATE OF MICHIGAN, *County of Marquette, ss:*

I, Stephen Rice, county clerk of the county aforesaid, do hereby certify that I have examined and compared the annexed transcript with the certified statement of John B. Johnson, treasurer of the township of Marquette, in said county, and have found the same to be correct. ARIEL N. BONNEY, *Deputy County Clerk.*

EXHIBIT 12.—*Statement of Lands in Town. No.* 45 *North, Range No.* 29 *West, in Marquette County, sold October* 5, 1868, *for Unpaid Taxes of* 1867.

No. of certificate.	Description advertised.	Sec'n.	Acres.	Amount due.	Amount sold for.	By whom paid or to whom sold.	P. O. address of purchaser.
78	S. 1-2 of	8	320	8 83	8 83	Wm. C. Culbertson	Girard, Pa.
79	S. E. 1-4 of	9	160	4 91	4 91	do.	do.
80	S. E. 1-4 " S. W. ¼	9	40	1 97	1 97	do.	do.
81	N. W. 1-4 of S. W. 1-4	9	40	1 97	1 97	do.	do.
82	S. 1-2 of	10	320	8 83	8 83	do.	do,
83	S. 1-2 " N. E. 1-4	10	80	2 95	2 95	do.	do.
84	S. E. ¼ of N. W. ¼	10	40	1 97	1 97	do.	do.
86	N. 1-2 of	15	319.20	8 83	8 83	do.	do.
87	N. 1-2 of	17	320	8 83	8 83	do.	do.
88	Lots 1 & 4	18	108.20	3 49	3 49	do.	do.

TREASURER'S OFFICE, MARQUETTE COUNTY,
MARQUETTE, *October 5th*, 1868.

I hereby certify that in the foregoing transcript of sales for taxes of 1867 and previous years, in all cases where the amount belonging to any description is placed in the column headed "Amount on bids for State," that such descriptions were bid off to the State by me according to law. Also, that those descriptions marked "Withheld" were withheld from sale by me for the reasons written opposite to them, respectively.

HENRY D. SMITH,
Dep. Treasurer of Marquette County.

97 UNITED STATES OF AMERICA:

The Supreme Court.

WILLIAM C. CULBERTSON, Plaintiff in Error,
vs.
THE H. WITBECK COMPANY, Defendant in Error.

Know all men by these presents, that we, Peter White and Dan. H. Ball, of the city and county of Marquette and State of Michigan, are held and firmly bound unto The H. Witbeck Company, the defendant above-named, in the full and just sum of five hundred dollars, to be paid unto the said H. Witbeck Company, its attorney, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this fourth day of September, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas, lately, in a suit depending in the circuit court of the United States for the northern division of the western district of Michigan, between the above-named H. Witbeck Company, as plaintiff, and the said William C. Culbertson, as defendant,
98 judgment was rendered against the said William C. Culbertson, in favor of said H. Witbeck Company for the recovery of certain lands demanded by it, and for six cents damages besides costs; and the said William C. Culbertson having prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment aforesaid, and a citation having issued, directed to the said H. Witbeck Company, admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next:

Now, therefore, the condition of this obligation is such, that if the said William C. Culbertson shall prosecute his writ of error to effect, and answer all damages and costs, if he shall fail to make his plea good, then the above obligation to be void; else, to remain in full force and virtue.

PETER WHITE. [SEAL.]
DAN. H. BALL. [SEAL.]

Sealed and delivered in the presence of—

UNITED STATES OF AMERICA, }
Western District of Michigan, } *ss:*

Peter White and Dan. H. Ball, whose names are above subscribed, being duly sworn, do depose and say, each for himself, that he is worth five hundred dollars, over and above all just debts, liabilities, and exemptions.

PETER WHITE.
DAN. H. BALL.

Subscribed and sworn to before me this 4th day of September, A. D. 1884.

RICHARD BLAKE,
Notary Public in & for said County.

I approve of the foregoing bond in form and substance, and of the sureties thereto.

S. L. WITHEY,
Dist. Judge.

Filed Sept. 12, 1884.

W. S. HILL,
Dep. Clerk.

99 Supreme Court of the United States.

WILLIAM C. CULBERTSON, Plaintiff in Error.
vs.
THE H. WITBECK COMPANY, Defendant in Error,

To Edward Cahill, Esq., attorney for the defendant in error in the court below.

SIR: Please to take notice that on the twelfth day of September, A. D. 1884, having previously sued out a writ of error in the above cause, I lodged a copy of said writ for the defendant in error with the clerk of the circuit court of the United States for the northern division of the western district of Michigan, and at the same time deposited a supersedeas bond, duly approved by the Honorable Withey, district judge, with said clerk, which bond was executed by Dan. H. Ball and Peter White, of Marquette, in the county of Marquette, State of Michigan.

Yours, &c.,

JOHN W. STONE,
Att'y for Pl't'ff in Error.

Residence, Grand Rapids, Mich.

Dated Sept. 12th, 1884.

Due service of a copy of the foregoing notice is hereby acknowledged.

September 13, 1884.

EDWARD CAHILL,
Per BARRY,
Attorney for Pl't'ff Below.

100 UNITED STATES OF AMERICA:

Supreme Court.

WILLIAM C. CULBERTSON, Plaintiff in Error,
vs.
THE H. WITBECK COMPANY, Defendant in Error.

To The H. Witbeck Company, defendant in error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed

in the clerk's office of the circuit court of the United States for the northern division of the western district of Michigan, wherein William C. Culbertson is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable S. L. Withey, district judge, sitting as circuit judge, this fourth day of September, in the year of our Lord one thousand eight hundred and eighty-four.

S. L. WITHEY,
Dist. Judge.

101 Due service of the foregoing citation is hereby acknowledged.

September 13th, 1884.

EDWARD CAHILL,
Per BARRY,
Attorney for Pl't'ff Below.

[Endorsed:] No. 64. Supreme Court of the United States. Wm. C. Culbertson, plaintiff in error, *vs.* The H. Witbeck Company, defendant in error. Citation. Filed Sept. 17, 1884. W. S. Hill, dep. clerk. John W. Stone, att'y for pl'ff in error.

102 UNITED STATES OF AMERICA:

The Supreme Court. In Error.

WILLIAM C. CULBERTSON, Plaintiff in error,
vs.
THE H. WITBECK COMPANY, Defendant in error.

Of the October term, in the year of our Lord one thousand eight hundred and eighty-four.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capital in the city of Washington, comes the said William C. Culbertson, by John W. Stone, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1. Said circuit court erred in receiving in evidence the record of deed from William A. Pratt and wife, to Still Manning and William Wright, dated October 29th, 1855, against the objection of counsel for the defendant below, as stated in the bill of exceptions.

2. That said circuit court erred in receiving in evidence the deed of Still Manning and wife, and William Wright and wife, to Edward C. Wilder, against the objection of counsel for defendant below, as stated in bill of exceptions.

3. Said circuit court erred in receiving in evidence what purported to be a record of the will of Edward C. Wilder, and the
103 probate thereof in Marquette county, Michigan, against the

objection of counsel for defendant below, as set forth in said bill of exceptions.

4. Said circuit court erred in rejecting the record of declaration of trust, executed by Still Manning and William Wright, to William A. Pratt, dated November 7th, 1855, offered in evidence by the counsel for defendant below, together with the other evidence offered in that connection and set forth in said bill of exceptions.

5. Said circuit court erred in receiving in evidence, against the objection of counsel for defendant below, the resolution of the board of supervisors of Marquette county, adopted June 17th, 1865, relating to an allowance to Honorable Clarence E. Eddie, circuit judge.

6. Said circuit court erred in receiving in evidence, against the objection of counsel for defendant below, testimony to show the balance of moneys in the treasury of Marquette county, January, 1866.

7. Said circuit court erred in receiving in evidence, against the objection of counsel for defendant below, the several stubs of orders appearing to have been issued by the county clerk of Marquette county to Honorable C. E. Eddie, circuit judge.

8. Said circuit court erred in receiving evidence, against the objection of counsel for defendant below, to show that the aforesaid orders, issued to Honorable C. E. Eddie, were paid out of the general funds of the county.

9. Said circuit court erred in receiving the testimony of the witness, W. P. Healy, showing the discussion had in the board of supervisors about the resolution adopted by the board to pay
104 Hon. C. E. Eddy, circuit judge, three hundred and fifty dollars per annum; which testimony was to the effect that the substance of the discussion was that they could not get a good judge without paying an extra compensation, and that it was agreed that Judge Eddie should have three hundred — fifty dollars; that it was understood and declared that the circuit judge could not live on what the State was paying him and this was to pay him more than the State was paying.

10. Said circuit court erred in allowing said witness, W. P. Healy, against the objection of counsel for defendant below, to answer the question: "In making an estimate of what was necessary to raise for the contingent fund, how did you arrive at it—or the board?" and in deciding that said witness might testify whether the item of three hundred and fifty dollars for the circuit judge was included by the board in making up their estimate of the amount required to be raised for the contingent fund. In accordance with which ruling, said witness testified substantially that said amount was included by the board as an item in making up the contingent fund that year and every year right along.

11. Said circuit court erred in allowing the witness, M. H. Maynard, against the objection of counsel for defendant below, to answer the following question: "What was the discussion that is referred to in that resolution?"—relating to the resolution to pay additional compensation to Judge Goodwin. In answer to which question said witness testified substantially that allowances had been pre-

viously made to Judge Goodwin as additional compensation for his services as judge, and that payment had been stopped on the ground that, in the judgment of the board, it was illegal; that quite a sum had accrued under the former resolution which
105 remained unpaid; that Judge Goodwin had requested the witness to use his influence with the board to procure its payment, or the allowance of some other sum as additional compensation, which the witness did; and that it was discussed in and out of the board, and the result was, that in the meeting referred to, the board appeared to have taken action allowing the aforesaid sum, and that the talk in the board at the time of the adoption of the resolution was that this was voted to Judge Goodwin as additional to the salary paid him by the State, as compensation for his services as judge.

12. Said circuit court erred in allowing said witness, M. H. Maynard, against the objection of counsel for the defendant below, to answer the question: "Whether, as a matter of fact, the money so appropriated was put into the tax for that year"—referring to the sum of four hundred dollars appropriated by resolution to pay Judge Goodwin. In answer to which question, the witness testified that said sum was so put in, was included in the tax of 1861.

—. Said circuit court erred in receiving, against the objection of counsel for defendant below, evidence to show that a warrant was drawn upon the treasurer of Marquette county, for the sum of four hundred dollars, appropriated as aforesaid to Judge Goodwin, and said sum was paid.

14. Said circuit court erred in refusing to charge the jury, upon request of counsel for defendant below, that "unless it appears from the evidence that a sum of money was apportioned to particular descrpitions or pieces of this land larger than would have been but for the raising of the three hundred dollars and the four
106 hundred dollars unlawfully, then, as to such pieces, the raising of the unlawful tax would not vitiate the sale; that the title of the defendant to any piece of land cannot be found invalid unless that piece had a larger sum apportioned to it than it would have had but for the illegal levy, and that fact must appear from the evidence."

15. Said circuit court erred in refusing to charge, upon request of counsel for defendant below, that there was no evidence upon the points referred to in the last preceeding the assignment of error.

16. Said circuit court erred in charging the jury as follows: "As I understand this question, it presents itself to you as a mere matter of fact as to whether the sum in question for the year 1861, to Judge Goodwin, and for the other years for different sums to Judge Eddie, was incorporated as an item in making up the sum of the tax for general purposes during those years, or not; whether this sum for '61, and for the other years, were included or constituted an item to make up the amount of tax raised during these years, that was actually levied."

17. Said circuit court erred in charging the jury as follows: "You are to say from the evidence, and mainly from the evidence of Mr. Healy and Mr. Maynard, whether such sums for additional

salary were annually, during the years that have been mentioned, actually included in the taxes levied for the purposes claimed by the plaintiff in this case, to wit: to pay salaries in addition to the salary which the State paid to those men as judges? If so, we instruct you it was an unlawful levy of taxes and vitiated the tax, so far as the lands in question are concerned, for those years, so that no valid tax title could exist upon those lands for the years
107 for which they were sold as delinquent, which embraced and contained a sum or sums mentioned, for those years, to pay the salary of these judges."

18. Said circuit court erred in submitting to said jury the question of validity of the tax deeds put in evidence, issued for taxes of the year 1861, for the reason that there was no legal evidence tending to show the same to be invalid.

19. Said circuit court erred in submitting to said jury the question of validity of the tax deeds put in evidence, issued for taxes of the year 1865, for the reason that there was no legal evidence tending to show the same to be invalid.

20. Said circuit court erred in submitting to said jury the question of validity of the tax deeds put in evidence, issued for taxes of the year 1866, for the reason that there was no legal evidence tending to show the same to be invalid.

21. Said circuit court erred in submitting to said jury the question of validity of the tax deeds put in evidence, issued for taxes of the year 1867, for the reason that there was no legal evidence tending to show the same to be invalid.

22. There is also error in this, to wit: That, by the record aforesaid, it appears that the aforesaid judgment was given for the said H. Witbeck Company against the said William C. Culbertson, whereas, by the law of the land, the said judgment ought to have been given for the said William C. Culbertson against the said H. Witbeck Company, and the said William C. Culbertson prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of the said judgment, etc.

JOHN W. STONE,
Attorney for Plaintiff in Error.

108 [Endorsed:] No. 64. Supreme Court of the United States. Wm. C. Culbertson, pl't'ff in error, *vs.* The H. Witbeck Company, def't in error. Assignment of errors. Filed Sept. 17, 1884. W. S. Hill, dep. clerk. John W. Stone, att'y for pl'ff in error.

Endorsed on cover: W. Michigan C. C. U. S. No. 217. William C. Culbertson, plaintiff in error, *vs.* The H. Witbeck Company. Filed March 25, 1885.

124-326

Supreme Court U.S.
FILED
MAR 27 1888
JAMES H. McKENNEY.

Supreme Court of the United States.

OCTOBER TERM, 1887.

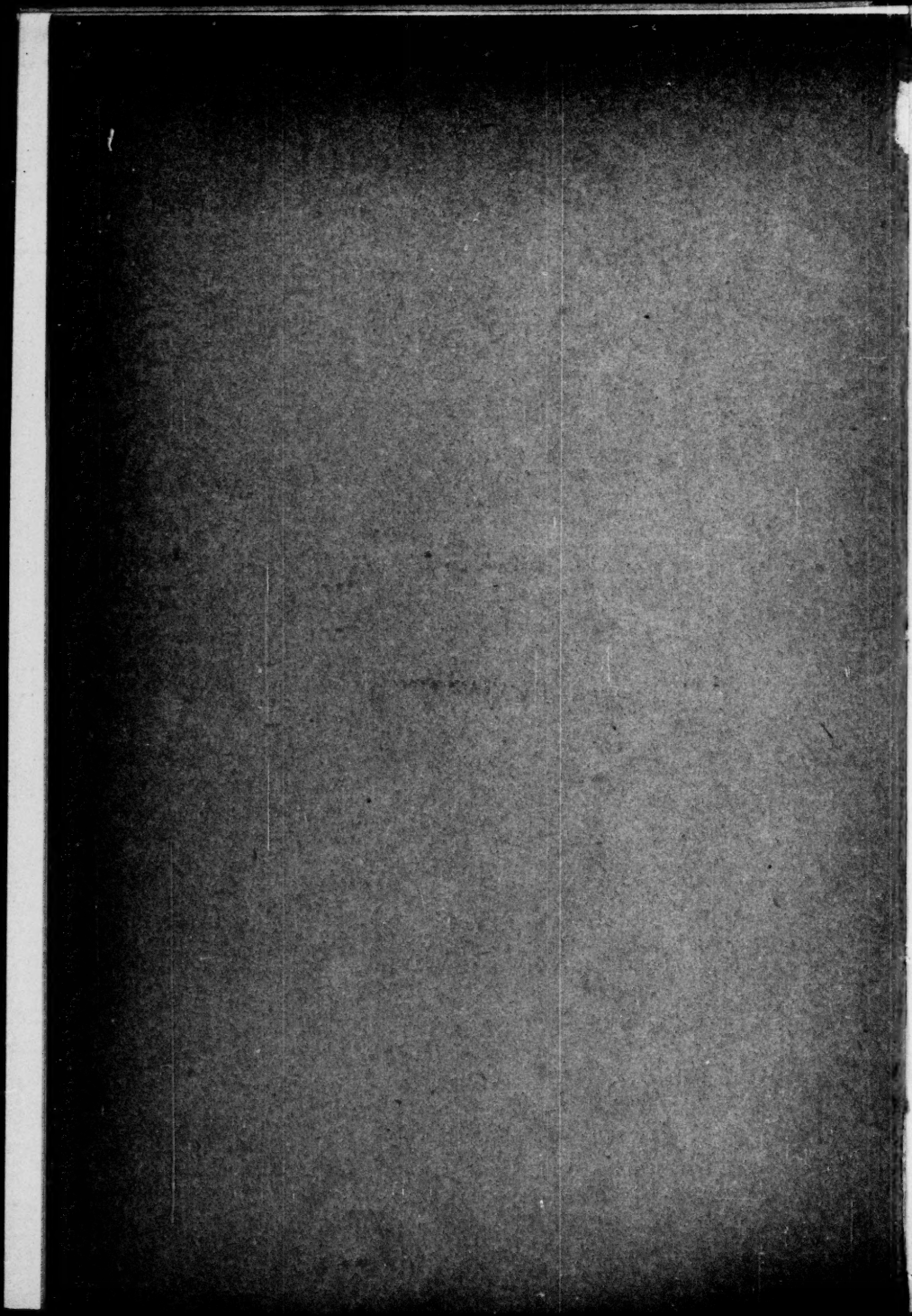
WILLIAM C. CULBERTSON,
Plaintiff in Error,
vs.
THE H. WHITBECK COMPANY,
Defendant in Error.

No. 217.

BRIEF FOR PLAINTIFF IN ERROR.

D. H. BALL,
A. T. BRITTON,
A. B. BROWNE,
W. H. SMITH,
Attorneys for Plaintiff in Error.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1888.



Supreme Court of the United States.

OCTOBER TERM, 1887.

WILLIAM C. CULBERTSON,
PLAINTIFF IN ERROR,
v.
THE H. WITBECK COMPANY,
DEFENDANT IN ERROR.

No. 217.

On Error to the Circuit Court of the United States, for the Northern Division of the Western District of Michigan.

STATEMENT OF CASE.

This is an action of ejectment, begun in the circuit court for the County of Marquette, State of Michigan, by filing declaration April 3, 1882, by the H. Witbeck Company, as plaintiff, against William C. Culbertson as defendant, to recover the following described lands situate in the County of Marquette, in said State, to wit:

S. ½ sec. 8; N.W. of S.W., S.E. of S.W., and S.E. ¼ sec. 9; S. ½, S. ½ of N.E. ¼, and S.E. ¼ of N.W. ¼ sec. 10; N. ½ sec. 15; N. ½ sec. 17; N.E. ¼ sec. 18, and lots No. 1 and 4 in sec. 18, all in T. 45 N., of R. 29 W., plaintiff claiming title in fee.

The case was removed to the United States court by petition filed August 29, 1882, and the record was filed in said court September 5, 1882. The trial was had and verdict rendered in favor of the plaintiff, July 24, 1883, and judgment was entered thereon; and on motion of the defendant, in accordance with statute, said verdict and judgment were set aside and a new trial granted February 2, 1884 (Record, page 14).

The second trial was had, resulting in verdict and judgment in favor of the plaintiff and against the defendant July 16, 1884 (Rec., p. 15), and defendant below brings error.

The lands described in the declaration were purchased from the United States October 1, 1855, and were patented to the purchasers May 5, 1857. October 29, 1855, they were all conveyed by the patentees to William A. Pratt (Rec., p. 17).

As a link in the chain of title plaintiff offered in evidence what purported to be the record of a deed from William A. Pratt and wife to Still Manning and William Wright, dated October 29, 1855, conveying the lands in question. Said deed was executed and acknowledged in the State of Michigan, and was attested by only one witness as to the signature of William A. Pratt, the grantor. Said record was admitted in evidence against the objection of defendant, and he excepted (Rec., pp. 17, 18, and 19).

Manning and Wright, after the date of the deed above referred to, conveyed said lands to Edward C. Wilder, but the date of such conveyance is not shown by the record. The deed purported to have been acknowledged in the year 1860. The officer taking the acknowledgment certified that he was satisfied that the persons appearing before him and making the acknowledgment were the grantors in the deed of conveyance. The admission of this deed was objected

to by defendant; objection overruled and exception taken (Rec., pp. 19 and 20).

By what purported to be a record of the last will and testament of Edward C. Wilder, deceased, admitted in evidence against objection, it appeared that said testator bequeathed said lands to his wife, Sophia A. Wilder. Said record also showed that said will had been admitted to probate in the county of Marquette, upon a supposed probate had in the county of New York, in the State of New York. Objection was made thereto by defendant, that there was no proof of facts necessary to give the probate court for the county of Marquette jurisdiction. This objection was overruled and exception taken (Rec., pp. 20 to 22).

Sophia A. Wilder, as widow and sole executrix of Edward C. Wilder, conveyed said lands by quit claim to J. Henry Moores, May 17, 1881; also conveyed the same in her individual capacity by quit-claim deed, December 8, 1881. Moores subsequently, and before the commencement of this suit, conveyed to the plaintiff below.

On the defence it was sought to show by a deed executed by Manning and Wright, that the conveyance made by Pratt to them was made in trust, and that they held one-half interest in trust for Pratt and one Peck, and that a portion of the interest of said Pratt had not been acquired by the said plaintiff (Rec., pp. 23 and 24), defendant's counsel claiming that, by virtue of said trust, said Pratt and Peck, under the statutes of Michigan, held the legal title, of which they had not been divested. Said offer was refused by the court and exception taken.

The most of the lands involved in this suit were sold for delinquent taxes of the years 1861, 1865, and 1866, and conveyances made by the Auditor-General of the State upon such sales. All the titles so acquired upon these sales were conveyed to Culbertson before

the commencement of this suit. A part of the lands were sold by the state and conveyed by the Auditor-General directly to Culbertson and one Welcome Hyde for taxes of 1866, and all the lands were purchased by the said Culbertson for the delinquent taxes of 1867 before the commencement of this suit, but were conveyed to him after the commencement of the suit. These conveyances from the Auditor-General were admitted in evidence as *prima facie* evidence of title in Culbertson, the defendant below, and are made *prima facie* evidence by statute.

Evidence was introduced by the plaintiff below, for the purpose of showing that the conveyances for delinquent taxes were invalid. The rulings of the court, however, upon such evidence affecting the validity of such sales, were confined to evidence tending to show that certain sums of money were paid during these years to the circuit judges out of the general fund of the county, which money was supposed to have been raised by taxes of those years.

The only questions arising upon the evidence introduced to defeat the tax sales relate to the payment of such moneys to circuit judges, and the evidence introduced for the purpose of showing that they were included in the taxation for the years for which the sales were made.

October 21, 1861, the Board of Supervisors of Marquette County resolved to pay $400 to Judge Goodwin, in full of all demands against the county up to January 1, 1862.

The plaintiff introduced oral testimony tending to prove that Judge Goodwin was judge of the circuit court, and that this allowance made to him by the supervisors was as additional compensation to that allowed him by the state as such judge. Plaintiff also introduced oral testimony tending to show that in determining the amount of taxes required for county purposes for the year 1861, said sum of $400 was taken into consideration.

The record of the Board of Supervisors showed a levy of a tax of 6½ mills on the dollar for the contingent fund.

It was claimed, and is here claimed, that such oral testimony was inadmissible, and that the taxes levied and accounts allowed by the supervisors could only be shown by the record. Also that the testimony of the witness tending to show that the sum of $400, or any sum intended for illegal purposes, was included in the levy of the tax for contingent or general purposes, as shown by the record, was incompetent as disputing the record, and inadmissible to defeat a title based upon the record.

Evidence was introduced to show that the said sum of $400 was paid to Judge Goodwin. This evidence was objected to, objection overruled, and exception taken.

As affecting the taxes of 1865, 1866, and 1867 it was shown that on June 17, 1865, a resolution was adopted and entered upon the record of the Board of Supervisors, to pay to Hon. C. E. Eddie, Circuit Judge, $350 per annum during his term of office, out of the contingent fund, or out of money in the Treasury not otherwise appropriated. What purported to be stubs of orders drawn on the county treasurer in favor of Hon. C. E. Eddie, were introduced as evidence that said sum was paid to him, from July 5, 1865, to September 29, 1868, for services as judge. It was insisted, upon the part of the defendant below, and is insisted now, that said stubs were incompetent evidence to show the payment of such money or the object for which the same was paid. It is also urged that evidence of the payment of such orders or sums of money was irrelevant to the issue, and inadmissible. The court overruled the objection and admitted the evidence, and exception was taken.

In each of said years there was raised by tax, as a general county fund in the County of Marquette, certain sums of money, of which the amount apportioned to the township

of Marquette in which said lands were situated, were as follows: 1865, $6,136.25 (see Rec., p. 30); 1866, $10,328.50 (Rec., p. 36); 1867, $3,600 (Rec., p. 38).

Oral testimony was introduced to show that the object of voting said sum of $350 per annum to Judge Eddie was that it was understood by the supervisors that the compensation paid him by the State was not sufficient, and this was for compensation for judicial services in addition to that paid by the State (Record, p. 30). This evidence was admitted against the objection of defendant, and exception taken.

Oral testimony was also introduced to show that the Board of Supervisors in voting said county taxes, in each of the years aforesaid, included the said sum of $350 in their estimate (Record, p. 30). It was insisted by the defendant below that such testimony was incompetent; that the taxes raised, and the object for which they were raised, could be shown only by the record, and that such testimony was contradictory of the supervisors' record, and could not be introduced to impeach defendant's title. The evidence was admitted against the objection of defendant, and exception taken.

Assignment of Errors.

1st. The court erred in admitting in evidence the deed of William A. Pratt, having but one witness.

2d. The court erred in admitting in evidence the deed from Manning and Wright to Edward C. Wilder.

3d. The court erred in admitting in evidence the record of the probate of the will of Edward C. Wilder, by the Probate Court of Marquette County, Michigan.

4th. The court erred in rejecting the deed of trust made by Still Manning and William Wright offered by the defendant.

5th. The court erred in admitting oral evidence to show that the taxes levied included any sum or sums to be paid to any judges as additional compensation for their services as judges.

6th. The court erred in admitting in evidence the stubs of orders on the County Treasurer for the purpose of showing that moneys had illegally been paid to the judges out of the amounts raised by taxation.

7th. The court erred in charging the jury as to the effect of the parol evidence of the witnesses Maynard and Healy.

8th. The court erred in giving judgment for the plaintiff below, when by the law it should have been given for the defendant below.

ARGUMENT.

I.

The record of deed from William A. Pratt and wife to Still Manning and William Wright, through which the plaintiffs derived their title, should not have been received in evidence (Printed Record, pp. 17 and 18).

By statute of Michigan (Howell's Statutes, Sec. 5658) it is provided that "Deeds executed within this State, of lands, "or any interest in lands therein, shall be executed in the "presence of two witnesses, who shall subscribe their names "to the same as such, and the persons executing such deeds "may acknowledge the execution thereof before any judge "or Commissioner of a court of record, or before any notary "public, justice of the peace, or master in chancery, within "the State."

Under a similar statute, the Supreme Court of Michigan held, in the case of *Crane* v. *Reeder* (21 *Mich.* 60), that a deed not so witnessed was not valid to convey title.

It is true that such a conveyance, if proved, might be held valid in equity as a contract to convey, and a statute of Michigan, enacted in 1861 (Howell's Statutes, Sec. 5727), provides that no instrument intended to operate as a conveyance of land, "made in good faith and for a valuable "consideration, whether heretofore made or hereafter to be "made, shall be wholly void by reason of any defect in any "statutory requisite in the sealing, signing, attestation, "acknowledgment, or certificate of acknowledgment there-"of;" and that it may operate as an agreement to convey, and may be enforced in equity; and that when such an instrument shall have been recorded it shall operate as legal notice of the rights secured thereby. But the rights acquired by the grantee in such a deed are merely equitable, which in an action of ejectment, where title is in question, it is only the legal title that can be considered.

Besides such a record is unauthorized, and is not evidence of the execution of the deed, nor that it was made in good faith, and for a valuable consideration. The statute does not make the record of a deed, defectively executed, evidence of the existence and genuineness of the original (*Brown* v. *Cady*, 11 *Mich.*, 535, 537).

In the case of *Crane* v. *Reeder*, (21 Mich., 61, *supra*) the court said:

"A deed at common law was not sufficient without some "enrolment, or some act *in pais* to transfer title, and under "the ordinance, which recognized the fact, that, in this coun-"try there must be many non-resident owners; and much "unoccupied land, a new rule was devised to take the place "of all forms and ceremonies not mentioned there, and "which would have been onerous and impracticable. *It* "*has been held, and we think correctly, that under such* "*statutes, the witnesses are essential to the validity of the* "*conveyances.* *French* v. *French*, 3 N. H., 234; *Courcier* "v. *Graham*, 1 Ham., 330; *Patterson* v. *Pease*, 5 Ham.,

"194; *Marvin* v. *Camp*, 3 Conn., 35; *Clark* v. *Graham*, "6 Wh., 577."

In *French* v. *French*, *supra*, the statute provided: "That "all deeds, or other conveyances of lands, tenements, or "hereditaments, lying in this State, signed and sealed by "the party granting the same, having good and lawful "authority thereunto and signed by two or more witnesses, "and acknowledged by each grantor or grantors, before a "justice, and recorded at length in the registry of deeds, in "the county where such lands, tenements, and heredita- "ments be, shall be valid to pass the same, without any "other act or ceremony in law whatever."

The court said: "No doubt can be entertained that all "conveyances comprehended within this section of the "statute must be signed by two witnesses, at least, in order "to render them valid. The statute is peremptory in this "particular, and it follows that the plaintiff, by virtue of "the instrument in question, can derive no title under the "statute."

In *Courcier* v. *Graham* (1 Ohio, 330, *supra*), the court said: "The deed from Ridle to Vanhorn was properly ex- "cluded. By the first section of the act providing for the "execution and acknowledgment of deeds, passed February "14, 1805, it is provided that all deeds for the conveyance "of lands, &c., 'shall be signed and sealed by the grantor, "'in the presence of two witnesses, who shall subscribe the "'said deed of conveyance, attesting the acknowledgment "'of the signing and sealing thereof,' &c. This law was in "force at the time the deed from Riddle purports to have "been executed. This deed was defective, inasmuch as it "was attested but by one witness. The law was not com- "plied with. It could convey, at most, only an equitable "interest. The plaintiffs were to receive a legal estate, free

"from incumbrance, the title to which should be indis "putable. This deed did not convey such an estate; *of* "*course*, it could not be received in evidence."

This court in *Clarke* v. *Graham* (6 Wheat., 577, *supra*) have added the weight of its authority to the construction given by the Supreme Court of Ohio. It said: "It is per- "fectly clear that no title to lands can be acquired or "passed, unless according to the laws of the State in which "they are situate. The act of Ohio regulating the convey- "ance of lands passed on the 14th of February, 1805, pro- "vides 'that all deeds for the conveyance of lands, tene- "'ments, and hereditaments, situate, lying, and being in this "'State shall be signed and sealed by the grantor in the pres- "'ence of two witnesses, who shall subscribe the said deed or "'conveyance, attesting the acknowledgment of the signing "'and sealing thereof; and if executed within this State "'shall be acknowledged by the party or parties, or proven "'by the subscribing witnesses, before a judge of the court "'of common pleas, or a justice of the peace in any county "'in this State.' Although there are no negative words in "this clause, declaring all deeds for the conveyance of lands "executed in any other manner to be void; yet this must "be necessarily inferred from the clause in the absence of "all words indicating a different legislative intent; and in "point of fact such is understood to be the uniform con- "struction of the act in the courts of Ohio. The deed, then, "in this case, not being executed according to the laws of "the State, the evidence was properly rejected by the circuit "court."

This case, like the one at bar, was ejectment, and the whole case turned upon the single point as to the admissibil- ity of a deed with but one subscribing witness.

II.

The record of the will of Edward C. Wilder, and the order admitting the same to probate, should have been excluded (Record, pp. 20 to 22). It appears to have been proved, not by the subscribing witnesses, but upon a supposed probate thereof by the surrogate court of the county of New York, in the State of New York.

The statute for admitting to probate wills that have been proved in any other state, and which may operate on property in Michigan, is as follows: Sec. 5806 of Howell's Statutes:

"When a copy of such will, and the probate thereof, "duly authenticated, shall be produced by the executor or "other person interested in such will, to the probate court, "such court shall appoint a time and place of hearing," &c.

It does not appear from said record that such copy of will and probate, duly authenticated, was ever presented to the court. The paper required to be presented to the probate court is not only the copy of the will, but also of the foreign probate and due authentication. The law contemplates all these as forming together the one instrument or subject-matter to be acted on, and all are made essential to call the probate court into action, and authorize it to exercise jurisdiction (*Pope* v. *Cutler*, 34 *Mich.*, 152). The paper presented for probate as the will of Edward C. Wilder was, so far as the record shows, only what purported to be *a copy of the will.*

The probate court, created by the laws of Michigan, is a court of limited jurisdiction. Such courts, not having general jurisdiction, there is no presumption in favor of the legality of their action. The record in each case *must show such a state of fact as gives them jurisdiction.* In the case at bar it should show that the will had been probated by

the surrogate court of the city of New York, and should set out the record of such probate. No such probate is shown.

The statute of Michigan provides that "when a copy of "such will, *and the probate thereof, duly authenticated*, "shall be produced by the executor," &c.

The production of *such a probated will* is of the very essence of the case and is *the fact* on which the jurisdiction of the Michigan court rests, and therefore such probated will must affirmatively appear in the record in order to give the court jurisdiction.

Without probate the will could not operate to pass the title. Section 5804, of Howell's Statutes, provides that "no will shall be effectual to pass either real or personal "estate, unless it shall have been duly proved and allowed "in the probate court as provided in this chapter, or on ap- "peal in the circuit court or supreme court."

III.

The declaration of trust, executed by Manning and Wright (Printed Record, pp. 23 and 24), was improperly excluded; that is, supposing the deed of Pratt to them, above mentioned, was proved and vested in them the legal title.

It recites the conveyance to them, and then sets forth that on the purchase from the United States, one-fourth of the purchase money was paid by Pratt and one-fourth by Peck, and that they, the declarants, hold the undivided one-fourth of said lands in trust for Pratt and the same interest in trust for Peck. They are not to sell without the consent of a majority in interest, but each part owner (shareholder) can dispose of his interest as he shall see fit.

By statute of Michigan (Howell's Statutes, sec. 5563) it is enacted that "Uses and trusts, except as authorized and "modified in this chapter, are abolished, and every estate and

" interest in lands shall be deemed a legal right, cognizable " as such in the courts of law, except when otherwise pro- " vided in this title."

Section 5565 is as follows: " Every person, who, by " virtue of any grant, assignment, or device, now is, or here- " after shall be, entitled to the actual possession of lands, " and the receipt of the rents and profits thereof, in law or " in equity, shall be deemed to have a legal estate therein, " of the same quality and duration, and subject to the same " conditions, as his beneficial interest."

Section 5567: " Every disposition of lands, whether by " deed or device hereafter made, except as otherwise pro- " vided in this chapter, shall be directly to the person in " whom the right to possession and the profits shall be in- " tended to be invested, and not to any other, to the use " of, or in trust for, such person; and if made to one or " more persons in trust for, or to the use of another, no " estate or interest, legal or equitable, shall vest in the " trustee."

We submit that the interest of the beneficiaries as set forth in the instrument offered, under the provisions of these statutes, amounted to a legal title, and the conveyance of Manning and Wright thereafter made, through which the plaintiff below claimed title, conveyed only the interest of the grantors.

If we are correct, and the instrument had been admitted in evidence, the plaintiff below would have shown title in itself to only the undivided one-half interest in the lands.

IV.

Supposing the plaintiff below to have made a *prima facie* case of title in itself, that title was defeated by sales and conveyances made by the State for delinquent taxes, long before the conveyance to the plaintiff, and the defendant

below was at the time of the commencement of the suit the owner of the title so conveyed.

All the lands involved in this suit were sold by the State for delinquent taxes, to various persons, who, before the commencement of the suit, had conveyed to the defendant below.

The years' taxes for which the several parcels had been sold, and conveyances made before the commencement of the suit, are as follows:

S. ½,	Sec.	8, 1861, 1865.
N.W. ¼ of S.W. ¼,	"	9, 1861, 1865.
S.E. ¼ of S.W. ¼,	"	9, 1865.
S. ½,	"	10, 1861, 1865, 1866.
S.E. ¼ of N.E. ¼,	"	10, 1861, 1865, 1866.
S.W. ¼ of N.E. ¼,	"	10, 1861, 1865.
S.E. ¼ of N.W. ¼,	"	10, 1861, 1865.
N. ½,	"	15, 1861, 1865.
N. ½,	"	17, 1861, 1865.
Lot No. 1,	"	18, 1865.
Lot No. 4,	"	18, 1861, 1865.

The above statement comprises all the lands involved in the suit, except the S.E. ¼ of section 9.

In addition to the sales above mentioned, a part of the lands were sold by the State as "State tax lands," to Wm. C. Culbertson, July 18, 1868, they having been bid in to the State for delinquent taxes of 1866, and were conveyed to said Culbertson by the Auditor-General August 18, 1883, viz:

S.E. ¼,	Sec. 9.
S.W. ¼ of N.E. ¼,	" 10.
N. ½,	" 15.
N. ½,	" 17.
Lo. No. 1,	" 18.
Lot " 4,	" 18.

And all the lands were purchased by said Culbertson, at a sale made by the treasurer of the County of Marquette for delinquent taxes of 1867, October 5, 1868, and were conveyed to him by deed, by the Auditor-General, on such purchase, August 18, 1883 (Printed Record, pp. 25 to 28).

These last two conveyances were made after the commencement of the suit, but before the trial, and the purchases were made long before the commencement of the suit.

The statute under which the taxes were levied, and the tax sales made and deeds issued, which are involved in this suit, is the tax law of the State of Michigan, approved February 14, 1853, and found in the compiled laws of the State of Michigan of 1857. By that statute it is provided (sec. 783, Compiled Laws, 1857) that "real estate shall, for "the purpose of taxation, be construed to include all lands "within the State, and all buildings and fixtures thereon, "except in cases otherwise expressly provided by law."

When the assessment roll was made out in any organized township, a copy was to be delivered to the township treasurer for collection of the taxes specified therein, with the warrant of the supervisor of the township for such collection (Compiled Laws of 1857, sec. 819).

On or before the first day of February next following the year for which the taxes were assessed, the treasurer was required to make his return to the county treasurer of taxes collected (sec. 819, above cited), and a statement of the taxes remaining delinquent (Compiled Laws of 1857, sec. 833).

The county treasurer, after examining and finding the list correct, was required to return a statement of delinquent taxes in his county to the Auditor-General of the State, by the first day of March next following the receipt of the statement from the township treasurer (Compiled Laws of 1857, secs. 848 and 849).

The Auditor-General was required to cause all lands so returned delinquent and not paid before the day of sale, or so much thereof as was necessary, to be sold by the county treasurer of the respective counties, on the first Monday of October of the year following the year for which the taxes were assessed, after publication of notice of sale as required by statute (Compiled Laws of 1857, secs. 858 to 860).

He was required to add to the taxes on each parcel interest, "together with the costs of advertising, postages, "expense of sale, and returns thereof, and conveyances, cal- "culated upon each description by dividing such charges "by the whole number of descriptions" (sec. 859).

Interest on taxes was computed at the rate of 15 per cent. per annum from the first day of February next, after the same were assessed (sec. 851).

"SEC. 865. On the day designated in the notice of sale, "the several county treasurers, under the direction of the "Auditor-General, shall commence the sale of those lands "on which the taxes shall not have been paid, as aforesaid, "and shall continue the same from day to day, Sundays ex- "cepted, until so much of each parcel thereof shall be sold "as shall be sufficient to pay the taxes, interest, and charges "thereon: *Provided*, That every description of land em- "braced in said notice which had been bid off to the State "on a previous sale, and which remains unredeemed, or "otherwise disposed of, shall be bid off to the State by said "county treasurer."

"SEC. 870. At the sale aforesaid, the respective county "treasurers shall give to the purchasers, on the payment of "their bids, a certificate in writing, describing the lands "purchased, and the amounts paid therefor, and shall en- "dorse thereon the kind of funds received; and such cer- "tificates shall be regularly numbered, and a copy of each "forwarded by the county treasurer to the Auditor-General, "in such manner as he shall direct."

"SEC. 871. On the presentation of such certificate of sale "to the Auditor-General, after the expiration of the time

" provided by law for the redemption of lands sold as afore-
" said, he shall execute to the purchaser, his heirs or assigns,
" a deed of the land therein described, unless he shall have
" discovered that the same was improperly sold; which deed
" shall be *prima facie evidence of the regularity of all the*
" *proceedings, from the valuation of the land by the asses-*
" *sors to the date of the deed, inclusive, and of title in the*
" *purchaser.*"

" SEC. 873. Any person claiming any of the lands afore-
" said, or any interest therein, may, at any time within one
" year next succeeding the sale, redeem any parcel of said
" lands, or any part or interest in the same by paying, at
" his option, into the State Treasury or to the Treasurer of
" the county where such lands are situated, the amount
" for which such parcels was sold, or such proportion thereof
" as the part or interest redeemed shall then amount to, with
" interest thereon at the rate of twenty-five per cent. per
" annum."

" SEC. 879. If any parcel of land cannot be sold to any
" person for the taxes, interest, and charges, such parcel
" shall be passed over for the time being, and shall on the
" succeeding day, or before the close of the sale, be re-
" offered; and if, on such second offer, or during such sale,
" the same cannot be sold for the amount aforesaid, the
" county treasurer shall bid off the same for the State."

" SEC. 880. All lands bid off for the State as provided in
" the last preceding section shall continue liable to be taxed
" in the same manner as though they were not the property
" of the State, and such taxes shall be a charge upon such
" lands."

Deeds of conveyance issued under sales for delinquent taxes, under the provisions aforesaid, are denominated "Tax " Deeds" or " State Tax Deeds."

Lands bid off to the State for taxes and not redeemed were subject to sale as follows:

" SEC. 899. All lands heretofore bid off or that may here-
" after be bid off to the State for taxes, which have not been

" redeemed or otherwise discharged, shall be offered for sale " at the annual tax sales in October in each year."

Provision is made for giving notice of sales and the manner of conducting them by Sections 900 to 904.

" SEC. 905. The county treasurer shall, on payment of " the purchase money at such sale, issue certificates of sale " to the purchasers, in such form, and make such returns to " the Auditor-General as shall be prescribed by him, and " shall also transmit the moneys received on such sale to the " State treasurer, in such manner as he shall have directed."

" SEC. 906. The Auditor-General shall, on the presentation and surrender of the State Tax Land Certificate at " his office, or as soon thereafter as may be (except in cases " where the land has been previously sold at the Auditor-" General's office or redeemed, when the purchase money " only shall be refunded), execute a deed of the lands to " the purchaser or his assigns, which shall convey all of the " right acquired by the State under the original sale or " sales; and such deeds shall be *prima facie evidence of the* " *correctness of all the proceedings to the date of the deed,* " *and of the title of the grantee therein named;* and when " duly acknowledged may be recorded and admitted in evi-" dence in the same manner as other deeds of conveyance."

By section 907 lands bid in to the State were redeemable within the same time and in the same manner as lands sold to individuals for taxes.

" SEC. 908. All such lands remaining unredeemed, except " such descriptions as the State may have a title to for another " year or years, shall be subject to sale at any time, at the " office of the Auditor-General, and upon the payment there-" for, on his certificate to the State treasurer of the amount " for which such lands were bid off to the State, with interest " at 25 per cent. per annum, to be computed from the first " Monday in October, when such lands were bid off to the " State, to the time of such application, the Auditor-General " shall issue to the purchaser a certificate of purchase."

"SEC. 910. Any person may purchase any unsold State tax "land upon application therefor at the office of the Auditor-"General, and upon paying to the State treasurer, on the "certificate of the Auditor-General, the amount for which "the same was or should have been first offered in the "county, as State tax land, with interest upon said amount "at ten per cent. per annum, to be computed from the first "Monday in October, in the year in which the land was or "should have been so first offered in the county, to the day "of making such application and payment."

"SEC. 911. Upon application and payment being made, "as above mentioned the Auditor-General shall execute to "such purchaser a deed, conveying all the right, title, and "interest of the State in and to said State tax lands, ac-"quired by virtue of the original sale or sales to the State."

"SEC. 912. All the provisions of this act relative to deeds "executed by the Auditor-General, on the surrender of cer-"tificates of sale of State tax-lands, issued by the several "county treasurers, shall be applicable to deeds executed by "him for lands purchased at his office, pursuant to the pro-"visions of this act."

The foregoing references are to continuous sections of the compilation of the laws of Michigan, made in the year 1857.

By a statute of Michigan (Sec. 178, Compiled Laws of 1857; Sec. 283, Howell's Statutes of 1882) it is provided as follows:

"The Auditor-General may appoint a deputy for his "office, who shall be responsible, and can revoke such ap-"pointment at pleasure; and such deputy may execute the "duties of the office during sickness or necessary absence "of the Auditor-General."

The Supreme Court of Michigan, in the case of *Westbrook* v. *Miller* (56 Mich., 148), held that, under this statute, the Deputy Auditor-General had power to execute convey-

ances on sale of lands for taxes, in his own name, as Deputy Auditor-General.

The deeds executed by the Auditor-General, under which Culbertson derived his title were of two classes, examples of which are given in the bill of exceptions (Record, pp. 25 and 27): 1. "State Tax Land Deeds" in cases where the lands had been bid off to the State upon the tax sale, and after the expiration of the time of redemption sold and conveyed by the State, and 2, "Tax Deeds" where the lands were bid off by individuals at the tax sale, and deed issued to the purchaser, after the expiration of redemption.

Under the provisions of the statute above quoted, all these deeds were *prima facie* evidence of the regularity of all proceedings, to and including the sale, and of title in the grantee.

The validity of the statute, and the effect of the deeds thereunder, have been declared by the Supreme Court of Michigan in cases too numerous to justify citation. We merely call attention to the following:

Groesbeck v. *Seeley*, 13 *Mich.*, 329.
Hunt v. *Chapin*, 42 *Mich.*, 24.
Stockle v. *Silsbee*, 41 *Mich.*, 615.

The effect of these "Tax Deeds" and "State Tax Land "Deeds" as evidence of title in Culbertson was not questioned, but the plaintiff below sought to show that they were invalid, by reason of certain alleged defects in the proceedings on which they were based. The burden of proof was on the plaintiff below to show this.

Considerable documentary evidence of the proceedings in returning the taxes as delinquent, advertising the sale, &c., was given, but the only rulings of the court appearing in the record, against the defendant below, and consequently

the only questions arising here, as we apprehend, are those relating to extra allowances of compensation to circuit judges, and the evidence that was claimed as tending to show that a portion of the taxes upon which the Auditor-General's deeds were based, was levied for that purpose. It was claimed that all the deeds under which Culbertson claimed were affected by these allowances.

First. It was insisted that the deeds given for taxes of 1861 were void, because of an alleged illegal allowance to Judge Goodwin, of $400 made by the Board of Supervisors, Oct. 21, 1861 (Record, p. 30). The resolution allowing this merely rescinded all former action of the board on the subject of "additional compensation to Judge Goodwin," and ordered that he be paid $400, in orders on the Treasurer, upon his signing a receipt in full.

What the nature of the claim of Judge Goodwin for "additional compensation" was the supervisors' record did not show.

The plaintiff below was allowed to show by the oral testimony of M. H. Maynard, who was clerk of the board at the time of that action, that discussion was had in the board, and what talk he had with Judge Goodwin on the subject for the purpose of showing what the services were for which the money was paid, and also to show that in levying a tax for county purposes this $400 was included in the estimate (page 31). The only action of the board to raise taxes for county purposes, as shown by their records, was a resolution that "a tax of six and one-half mills on the dollar be raised "on the taxable property of Marquette and Schoolcraft "Counties for the contingent fund, to defray the general "expenses of the county" (Record, p. 32).

It appeared by evidence (to which we excepted, Record, p. 32) that a warrant for said $400 on the Treasurer was drawn in favor of Judge Goodwin, July 5, 1862, which

was paid. It does not appear what funds it was paid from, whether from money raised by taxes of 1861, or in some other year, or money received from other sources.

Second. It was urged by plaintiff below, that the deeds based on taxes of 1865, 1866, and 1867 were void by reason of allowances made to Judge C. E. Eddie, from July 5, 1865, to Sept. 29, 1868.

June 17, 1865, a resolution was adopted by the Supervisors to allow Judge Eddie $350 per annum, during the term of his office, "out of the contingent fund, or out of any "moneys in the Treasury not otherwise appropriated" (Record, p. 28). Evidence was given (under objection) to show that payments were made in accordance with this resolution. The payments were made out of the general fund of the county.

At the annual meeting of supervisors, held in Oct., 1865, it was voted to raise a county tax of one cent on each dollar of valuation, as determined by the Board, all but $4,500 of which was for the general fund (Record, pp. 29 & 30).

Counsel for plaintiff below was allowed to prove by oral testimony of W. P. Healy, who was a member of the Board of Supervisors in 1865, 1866, and 1867, that the object of the resolution above mentioned was to pay Judge Eddie, who was a circuit judge, $350 per annum, as compensation for his services as such judge, in addition to the salary he received from the State, and also that in each of the years mentioned, in making an estimate of the amount of tax required for the contingent fund, the item of $350 for Judge Eddie was included.

Under this evidence, the jury were instructed that the question for them to decide was merely whether these sums allowed to the judges were incorporated as items making up the sum of the tax for general purposes for those years.

"You are to say from the evidence, and mainly from the "evidence of Mr. Healy and Mr. Maynard, whether such "sums were annually, during the years that have been men- "tioned, actually included in the taxes and levied for the "purposes claimed by the plaintiff in this case, to wit, to "pay salaries in addition to the salary which the State paid "to these men as judges? If so, we instruct you that it "was an unlawful levy of taxes, and vitiated the tax, so far "as the lands in question are concerned for those years. So "that no valid tax title could exist upon those lands, for "the taxes for which they were sold as delinquent, which "embraced and contained a sum or sums mentioned for "those years, to pay the salary of those judges, because "there was no law authorizing the Board of Supervisors to "tax the people of this county for any such purpose. On "the contrary it is prohibited, their salary being fixed.

"Now as to this testimony, it was of course proper for "counsel to comment to you upon the effect of the testi- "mony, but there is no testimony tending to contradict "either Mr. Healy or Mr. Maynard. If you believe their "testimony, there can be no doubt as to what their verdict "will be, viz., for the plaintiff—that is, if you believe their "testimony and you think they are not mistaken in their "recollection."

We think the reception of the oral testimony above mentioned, and the instructions quoted, were clearly erroneous.

1. Conceding that it was not lawful for the supervisors to pay circuit judges salaries or compensation as such, in addition to that paid by the State, there was no competent evidence that the payment to either of the judges, or at least to Judge Goodwin, was for that purpose. The action of the Board was entered on the record, and oral testimony was not competent to add to or vary it. The record of the "former "action" on the subject might have thrown some light upon it, but was not introduced. The resolution that was introduced implies that there must be a record of "former ac- "tion," and therefore there must be better evidence than

the recollection of a witness of what took place nearly twenty-five years before.

2. But whatever may be said about the appropriation and allowance of such sums of money, a misappropriation of public moneys will not invalidate the taxes of the year in which it was raised (*Wright* v. *Dunham*, 13 *Mich.*, 414). In order to invalidate the sale upon that ground, it must appear that the tax or a portion of it was levied for an unlawful purpose.

We submit that there was no competent evidence of this, and that oral testimony received for that purpose was inadmissible. In the case of the appropriation to pay Judge Goodwin $400, the resolution was to pay that sum in orders on the Treasurer. It was not payable out of any particular fund, nor out of moneys to be raised by tax that year. It does not appear that there was not ample money in the treasury at that time to pay the allowance. The fact that the warrant was not given till the following year was purely accidental, so far as appears. No reason appears why the warrant was not given, and paid before the taxes for that year were collected, which could not be until after December 1st.

The resolution of the board, as entered on the record, was for the raising of six and one-half mills on the dollar of the equalized valuation, " to defray the general expenses of the " county." That could mean nothing else than a tax to pay the *legitimate expenses of the county*. Whatever any one member of the board, or all of them may have had in mind, as the expenses to be paid out of this tax, can have no bearing upon their action.

By statute it is made the duty of the clerk of the board, " To record all the proceedings of such board in a book " provided for that purpose " (Howell's Statutes, sec. 476). It must be presumed that he did so. The record of the

resolution in evidence was the record of all the proceedings of the board relative to raising county taxes for that year. That being a resolution to levy a tax for legitimate county expenses, it was incompetent to allow the record to be contradicted by parol testimony that the members of the board expected to use some portion of the money so to be raised for unlawful purposes.

In some cases, where the rights of third persons or creditors require it, it may be allowable to show action taken that the clerk has neglected to record (though not, we insist, for the purpose of impeaching the record), but the record cannot be contradicted.

Taymouth v. *Koehler*, 35 Mich. 22.

In the case of *Blanchard* v. *Powers* (42 Mich., 619), it was sought to defeat a deed given on a sale for delinquent taxes, by showing by the supervisor that in assessing the land he did not estimate it at its actual cash value, contradicting his certificate made in pursuance of law. The testimony was held inadmissible. In his opinion, Justice Graves uses the following language, which is very appropriate to this case:

"After the lapse of more than twenty years from the sale, " and after the deed has been on record nearly that period, " and after the holder of the tax title had been in possession " for some time, the holder of the original title began this " action of ejectment, and he asserts therein the right to do " away with the sworn official certificate of the supervisor " by his present recollection as a witness.

"There is no general rule of law which will permit this. " On the contrary, the course of decision is opposed to it " (Cooley on Taxation, 195).

"The statute contemplates that there shall be written evi- " dence of record, and in the form of this official certifi- " cate, that the estimate of the real estate has been at what

" the supervisor believed to be the true cash value, and " when such evidence has been made in the manner pre- " scribed by law, it is the legal medium of proof in collat- " eral proceedings, and is entitled to prevail therein to the " exclusion of oral evidence in contradiction. To permit " the contrary would amount to a surrender of the kind of " evidence provided by statute, in favor of another and very " inferior kind, and of most uncertain character. The " effectiveness of official certificates and the stability of " titles would depend upon what, after many years, could " be shown against them by the recollection of wit- " nesses."

In this case there was a board of supervisors, in 1861, acting under their oath of office in the levy of taxes. They placed upon their records, under the sanction of that oath, that they levied a tax of six and one-half mills on the dollar for the purpose of defraying " the general expenses of " the county." That was a lawful object. To defeat this title the clerk of the board was allowed to testify, against the solemn record he had made twenty-three years before, from his memory, that the record so made was not true, but that the real object of raising $400 of the tax was for a purpose other than " the general expenses of the county," and the learned district judge instructed the jury that if they believed that testimony, and that the recollection of the witnesses is not at fault, they must pronounce the deed for taxes of 1861 invalid.

In *Case* v. *Dean* (16 *Mich.* 12), it was held that when the board of supervisors had equalized the assessment rolls of the several townships of the county, and entered their determination upon their records, their action could not be invalidated by showing that they acted upon an erroneous footing of one of the rolls.

In *Ross* v. *McLung*, (6 *Pet.*, 283), it was sought to sustain the proof of a deed, required under the statute to be proved

before the court, by parol proof beyond what appeared on the record. In the opinion Mr. Chief-Justice Marshall says: "This is an attempt, by parol testimony, to vary a record. "It is an attempt to prove by the officer of the court that "his official certificate of probate, indorsed on the deed, did "not conform to the true state of the proof. This is in such "direct opposition to the settled rules of evidence as to "render it unnecessary to remark the danger of trusting to "memory in such a case, after a lapse of thirty-five years."

The statute under which the taxes involved in this suit were levied (Comp. Laws of 1857, Sec. 813) provides, that the "Board of Supervisors shall, at their annual session in October "in each year, ascertain and determine the amount of money "to be raised by tax for county purposes, and apportion "such amount * * * among the several townships "in the county, in proportion to the valuation of the "taxable property therein for the year, as equalized by the "board, which determination and apportionment shall be "entered at large on their records."

This is a record required by law to be made. It is now proposed, after twenty-three years, by the oral testimony of the clerk who made the record, to show in a collateral proceeding that it is untrue, and thereby defeat a title to land, based upon the action shown by that record.

3. The testimony of Mr. Maynard, in relation to the taxes of 1861, if admissible, does not show that the $400 was included in the tax—that is, that $400, or any sum, was added to the tax levy for that year—on account of the allowance to Judge Goodwin. The levy was six and one-half mills on the dollar. The Board figured up what they thought would be needed, found it somewhere near six and a half mills on a dollar, and voted to raise that amount. He could not say that it came within $500 of the amount they figured up. It was in round numbers. So far as he could tell the

six and one-half mills on the dollar may have amounted to $500 less than the amount estimated as needed (Printed Record, p. 32).

It is impossible to say, from his testimony, that any money was included in the tax levy for this purpose. Yet the jury were instructed that it was to be found from his testimony.

In this connection we call attention to the language of this court in the case of *Young* v. *Duvall* (109 U. S., 577), in which, speaking of the danger of allowing parol evidence to be given, impeaching the acknowledgment of a deed by a married woman, it said: "The mischiefs that would ensue "from a different rule could not well be overstated. The "cases of hardships upon married women, that might occur "under the operation of such a rule, are of less consequence "than the general insecurity in the titles to real estate which "would inevitably follow from one less rigorous." To the same effect is the case of *Hitz* v. *Jenks*, decided at the present term.

Second. As to the deeds for taxes of 1865, 1866, and 1867. All these deeds are claimed to be invalid, on account of the action of the Board of Supervisors taken June 17, 1865, allowing Hon. C. E. Eddie, Circuit Judge, $350 per annum, and the supposed action of the Board thereafter, levying taxes for such payment (Printed Record, p. 28).

1. Although it might be inferred from the resolution that the payments to be made to Judge Eddie were for compensation as judge, yet the resolution does not so state. All the presumptions are in favor of the correctness of official action, on general principles, and in favor of the tax deeds by statute; the reference to the "term of office as Judge of the 12th Judicial Circuit" is made only to fix the duration of the payment, and does not show that it was to be made on account of his office. The presumption must be that the payment was voted for a lawful purpose, unless

the contrary appears, and the contrary does not appear in the resolution.

The oral testimony, as we have urged in respect to the taxes of 1861, was incompetent for that purpose. So of these stubs, erroneously (as we insist) received in evidence (Record, p. 29.) The memoranda on the stubs are merely the clerk's idea of what the orders are issued for. He gets his idea from the bill if one is filed, or from the resolution. In the matter of this allowance, no bill would naturally be rendered. The resolution, as we have said, was silent on the question. Or if there was a bill, it or the resolution would be better evidence than the idea of the clerk, entered on the stub. The stubs, therefore, were not records required or authorized by law, but were merely memoranda made by the clerk, of what he deemed to be the fact, as gathered from the bill, resolution, or from any other source. Yet they went before the jury as evidence to show that the money was paid for "services as judge."

2. The testimony of W. P. Healy, who was a member of the board during the years 1865, 1866, and 1867, is of the same nature as that of Mr. Maynard in reference to taxes of 1861. In the first place he adds to the record, for the purpose of showing that the appropriation to Judge Eddie was for services as judge, and then is allowed to contradict the record, for the purpose of showing that his own action, and that of his fellow-members, was in violation of his official duty (Record, p. 30).

In 1865, the board voted, as the record showed, one cent on a dollar, a portion of which was to be applied to certain specified purposes, and the remainder was for "general expenses" (Record, p. 35).

In 1866, $14,577.88 was voted as a general tax (Record, p. 36). In 1867, a tax of $9,000 was voted, "to defray the "contingent expenses of the county for the ensuing year."

These records showed a levy of taxes in each of these years, for legitimate county expenses. They were allowed to be overturned, by the testimony of a member of the board who had assisted in making them, who for the years 1865 and 1866, *had signed the record as chairman of the board*, nearly twenty years before, and the jury were instructed that if they should find from this testimony that the board had included this $350 allowance to the judge in their estimate of taxes to be raised for those years—in other words, that the record was false—the deeds for taxes of those years must be held invalid.

The utility of the rule we have insisted on, and the impropriety of allowing the record to be impeached collaterally in this manner could not be better illustrated than by the facts of this case.

The records have stood as the solemn official acts of the board for many years, titles have been acquired and transferred in reliance on them, and now these titles are allowed to be defeated, upon the uncertain recollection of the persons who made the records, testifying that while they recorded their action as lawful, and in the line of their duty, they meant and intended something quite different; that they levied taxes ostensibly for lawful purposes, but with a mental reservation that a portion of the money when raised, was to be used for unlawful purposes.

The character of the testimony of both these witnesses was remarkable. In the case of Mr. Maynard, he was the clerk of the Board, having no authority but to record their action. He knew, or thought he did, that in figuring up to see how much county tax would be needed, the supervisors included the judge's compensation in the estimate, and he inferred that in voting a tax they meant to provide for it. That is all his knowledge could amount to.

In the case of Mr. Healy, his testimony was general, that

each year the amount was included in the estimate. The improbability of his recollecting the several transactions for so long a period should have been sufficient reason for refusing to let his testimony go to the jury.

But suppose they did figure in that amount when estimating the amount required. Does it follow that any of the tax was raised for that purpose? Can the object of the tax be proved by showing what the individual supervisors had in their minds when voting for it? And if so, can that be shown by proving what only one of them intended?

Millons of dollars are invested yearly in real estate, the title to which depends on official action shown by public records. To allow the titles to be overturned by this method of contradicting or varying the records would be to totally destroy the security of such titles.

The only ground on which the plaintiff below could recover was that presented by this testimony of Maynard and Healy, and the charge of the court that we have cited. We submit that the admission of the testimony, as well as the charge of the court in relation to it was erroneous, and the judgment should be reversed.

The several tax deeds introduced in evidence, being *prima facie* evidence of title, and there being no evidence against them they should have been held valid by the court, and it was error to submit the question of their validity to the jury.

D. H. BALL,
A. T. BRITTON,
A. B. BROWNE,
W. H. SMITH,
Attys. for Plff. in Error.

27-326

SUPREME COURT OF THE UNITED STATES.

WILLIAM C. CULBERTSON,

Plaintiff in Error,

vs.

THE H. WITBECK COMPANY,

Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

Brief and Argument of Edward Cahill, for Defendant in Error.

J. W. STONE, with whom is
D. H. BALL,
For Plaintiff in Error.

B. J. BROWN, with whom is
EDWARD CAHILL,
For Defendant in Error.

LANSING, MICH.:
Jno. H. Stephenson, Steam Printer.
1888.

SUPREME COURT OF THE UNITED STATES.

WILLIAM C. CULBERTSON, PLAINTIFF IN ERROR,

vs.

THE H. WITBECK CO., DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

This is an action of ejectment brought by the H. Witbeck Co., a corporation organized and existing under the laws of Wisconsin, against William C. Culbertson to determine the title to the lands described in the declaration. The suit was originally begun in the Circuit Court for the County of Marquette and State of Michigan, and was transferred to the U. S. Court by Mr. Culbertson. The plaintiff claims by mesne conveyances from the United States. The defendant claims under State tax deeds for the taxes of 1861, 1865, 1866 and 1867.

There have been two trials of the cause in the Court below, in each of which the plaintiff recovered. The defendant now brings error.

I.

The first error is assigned upon the admission in evidence of the record of a deed from William Pratt and wife to Manning & Wright. The objection made to it was that the deed was not entitled to record because having but one witness to the signature of Mr. Pratt.

The deed was executed and acknowledged by Mr. Pratt on

the 29th day of October, 1855, before one Ebenezer Warner, a Justice of the Peace, who, as we claim also signed as a witness with one Stephen Walsh.

Counsel for plaintiff in error in making up the bill of exceptions, omitted to put in the certificate showing the execution and acknowledgment of this deed by Mrs. Pratt. This omission was due, doubtless, either to accident or to counsel's supposition that the same was immaterial and was overlooked by counsel for defendant in error until the record was printed. The omission was unimportant except as it would show *when* and *where* the deed was executed by Mrs. Pratt. We shall argue that there is enough in the record to show that the wife executed the deed *after* her husband, and at a different time because:

a. Her signature appears after his on the deed.

b. It is usual for the wife who only signs to release dower to sign *after* her husband.

c. If she had executed the deed at the same time as her husband no separate witnesses to her signature would have been necessary.

In addition to these evidences which appear on the face of the record, we will venture the statement, which is outside of the record, but which counsel for plaintiff in error will not dispute, that Mrs. Pratt, in fact, executed the deed in Vermont, some days after her husband.

When the deed left the hands of Mr. Pratt, after he had executed it, but before his wife had done so, its appearance as to witnesses was as follows:

"Signed, sealed and delivered WM. A. PRATT, [L. S.]
in presence of [L. S.]
STEPHEN WALSH,
For WILLIAM A. PRATT.

The word "half" in the twelfth line was interlined before signing (on the 2d page).

STEPHEN WALSH.
EBENEZER WARNER.

Now if the witnesses to the signature of Mrs. Pratt had

signed below instead of above the note marking the interlineation it would have appeared as follows:

"Signed, sealed and delivered in presence of — WM. A. PRATT. [L. S.] HARRIET W. PRATT. [L. S.]

STEPHEN WALSH,
For WM. A. PRATT.

The word "half" in the twelfth line was interlined before signing (on 2d page).

STEPHEN WALSH,
EBENEZER WARNER.

W. H. ROCKWELL,
GEO. HOWE,
For HARRIET W. PRATT.

Ebenezer Warner was the magistrate who took the acknowledgment, and both he and Walsh were present at the signing of the deed by the first signer, or they could not have certified that the interlineation was made *before signing*. If the witnesses for Mrs. Pratt had signed below the line marking the interlineation as shown in the last illustration, it never would have occurred to any one to doubt that both Walsh and Warner intended to sign as witnesses to Wm. A. Pratt's signature. If the witnesses for Mrs. Pratt signed after Walsh and Warner, and at another time, it is of no consequence that they signed above them, rather than below.

We have not the original deed, and so cannot judge just how or where the names of the witnesses were written upon it. The note relating to the interlineation may have been written in before Walsh signed, and the latter may have by inadvertence signed above it, and at the request of the justice signed below it also, under the impression that the note was a part of the deed, or ought to be witnessed with the rest.

But this we know, that the Register of Deeds, when the instrument came to him for record, recorded it. As it was not entitled to record without two witnesses to each signature, it is probable that the names were so written upon the original deed as to satisfy the officer that they were intended as witnesses.

This is an old deed. It had been recorded nearly thirty years. It is to be treated with liberality, and the Courts will not deny it validity, if it be possible from any view of it to sustain it.

Carpenter vs. Dexter, 8 Wall, 426.
Morse vs. Hewett, 28th Mich., 481.

II.

The second error is assigned upon the admission in evidence of a deed from Still Manning and William Wright to Edward C. Wilder. Defendant's counsel objected to the admission of the deed for the reason that it did not appear from the certificate of acknowledgment that the persons acknowledging were the same persons as those named as grantors.

There is no statute in Michigan prescribing the form of the certificate of acknowledgment. But if there were, it would not apply to the deed from Manning & Wright to Wilder, because that deed was executed in New Jersey and has a clerk's certificate attached, showing that it was executed and acknowledged according to the laws of that state.

The following Michigan statutes relating to the execution of deeds apply (How. St., § 5659, 5660):

5659. If any such deed shall be executed in any other state, territory or district of the United States, such deed may be executed according to the laws of such state, territory or district, and the execution thereof may be acknowledged before any judge of a court of record, notary public, justice of the peace, master in chancery, or other officer authorized by the laws of such state, territory or district, to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of this state for such purpose.

5660. In the cases provided for in the last preceding section, unless the acknowledgment be taken before a commis-

sioner appointed by the governor of this state for that purpose such deed shall have attached thereto a certificate of the clerk, or other proper certifying officer of a court of record of the county or district, or of the secretary of state, of the state or territory within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is thereon represented to be, and that he believes the signature of such person to be genuine, and that the deed is executed and acknowledged according to the laws of such state, territory or district.

When a deed has such a clerk's certificate attached it is not necessary to look at the form of the certificate of the officer before whom the acknowledgment was taken. For the purposes of record the certificate of the clerk of the court of record is conclusive that the deed was executed and acknowledged according to the laws of the state where executed.

III.

The third error assigned is based on the fact that the Court allowed the plaintiff to put in evidence a record from the office of the register of deeds of Marquette county, of the will of Edward C. Wilder.

This record was offered by plaintiff's counsel in reliance upon the following statutes (How. St., § 5685 and 5822):

5685. All conveyances and other instruments authorized by law to be recorded, and which shall be acknowledged or proved as provided in this chapter, and if the same shall have been recorded, the record, or a transcript of the record, certified by the register in whose office the same may have been recorded, may be read in evidence in any court within this state without further proof thereof; but the effect of such evidence may be rebutted by other competent testimony.

5822. An attested copy of every will devising lands, or any interest in lands, and of the probate thereof, shall be

recorded in the office of the register of deeds of the county in which the lands thereby devised are situated: "and it shall be the duty of the judge of probate to cause such registration to be made, and the expense thereof shall be a charge against the estate, and shall be paid in the same manner as other expenses of administration are."

It was contended by counsel for defendant that this record was not admissible in evidence for two reasons:

1. Because it contained no proof that the probate court of Marquette county obtained jurisdiction to make the order admitting the will to probate in Michigan.

2. Because it contained no record of any authentication or probate by any foreign court or officer.

We take it the two reasons assigned are dependent on each other and are really one. The point relied on is this:

The record offered in evidence does not contain a copy of the probate of the will in New York, nor of the authentication thereof from the court of that state.

We submit the statute, (Sec. 5822 *supra*) does not contemplate that such papers shall be recorded in the office of the register of deeds. The sole purpose of requiring a record of wills in the office of the register of deeds is notice. Other statutes provide for a faithful record of everything relating to the proving and allowance of wills and other proceedings in probate courts. (How. St. §6756 *post.*)

It was not intended to duplicate such records in the office of the register of deeds, except so far as the same might be useful in giving notice to persons examining titles to lands.

We think the legislature intended to require an attested copy of the will and of the order admitting it to probate to be recorded, and to make that *prima facie* evidence of a will lawfully proved in the proper court, leaving the "effect of such testimony to be rebutted by other competent testimony." (How. St. 5685 *supra.*)

If the words "and of the probate thereof" were to be considered as used in the broad sense claimed by counsel for plaintiff in error they would, in the case of a domestic will, include all the testimony taken in proving the will, which in

case of a contest might be very voluminous. We do not think it will be contended that in the case of a domestic will the statute contemplates any thing more to be recorded in the register's office than is shown in this record. But it will be claimed that in the case of a foreign will the Michigan statute contemplates that the will and the foreign probate and authentication form together one instrument, and that when such a will is referred to it must be understood as including such documents also, and reliance will be placed upon the case of Pope vs. Cutler, 34 Mich., 150, to support that position.

We do not regard that case as authority upon the point involved here. In that case the record put in evidence and which the Supreme Court found to be insufficient was the record of the probate court. To such a record the language of the Court might well apply. The Court says:

"The submission to it (*i. e.* the probate court) of a paper purporting to be the copy of a foreign will, but without foreign probate or lawful authentication, can have no effect to put its power in motion. * * * Whether the probate court had before it these indispensable matters when it assumed to act we do not know. If they had they were a part of the subject matter and should have appeared with the rest."

This would certainly be true if speaking of the records of the probate court, because if the original record of that court were offered it ought *all* to have been offered. But if the evidence offered was a transcript from the record of the will in the probate court, provided for by How. St. § 5821 *post*, then the language of the court would not apply.

The section of the statute last referred to provides that, "every will when proved as provided in this chapter shall have a certificate of such proof indorsed thereon or annexed thereto, signed by the judge of probate, and attested by his seal, and every will so certified, and the record thereof, or a transcript of such record, certified by the judge of probate and attested by his seal, may be read in evidence in all courts without further proof."

It will be seen from the foregoing that the probate judge is required to indorse upon, or annex to every will proved, not the proof itself, but a certificate that it has been proved. For that purpose the following brief indorsement would be a substantial compliance with the statute:

"Proved and allowed before me this——day———188—

(Signed) ——— ———

Judge of Probate.

The full records of the court would disclose much more fully by what steps the court arrived at the conclusion certified to, but what Sec. 5821 contemplates is, the will with the decision of the court that it has been proved indorsed thereon, not the steps taken to arrive at that decision.

Taking it for granted that would be conceded in the case of a domestic will, then we say of a foreign will, that the evidence of its probate in a foreign state is allowed by the statute to stand in place of other proof of its validity as a will. But for the statute a foreign will would have to be proved like other wills, by the witnesses to it, or other competent testimony.

The statute has substituted for the testimony of witnesses the duly authenticated record of its probate in the foreign jurisdiction.

But this change in the method of proving such a will does not make the authenticated record a part of the will. The authenticated record is *evidence*, and only *evidence*. And when the statute speaks of an attested copy of a will, it does not, in the case of a foreign will, include the *evidence* by which such will was established, any more than it would include the evidence by which a domestic will was established.

Mr. Redfield, in his work on wills, says:

"When a will is proved the original is deposited in the office of the registrar of the court of probate, and a copy of the same, under the seal of the Court, together with a certificate of its having been proved, is delivered to the executor, together with letters testamentary, *and the copy and the cer-*

tificate constitute what is usually called the probate." Redfield on Wills, 2d vol., ed. 1886, p. 45.

The framers of the Michigan statute seem to have had in mind the practice pointed out by Mr. Redfield as the correct one, and when they said that "an attested copy of every will devising lands or any interest in lands, *and of the probate thereof*, shall be recorded in the office of the register of deeds of the county in which the lands thereby devised are situate," they will be presumed to have had in mind the well understood meaning of such language among men learned in the law.

The order admitting this will to probate recites the fact that the court had before it a duly authenticated copy of the will and of the record showing that it had been duly proved and allowed in the surrogate's court in and for the county and state of New York, and all the other facts necessary to give the Michigan probate court jurisdiction. For the purpose of allowing this will to be recorded in the office of the register of deeds this recital of jurisdictional facts, should be sufficient.

It seems to us very clear that a will so certified would, under the Michigan statute, and under the practice as indicated by Mr. Redfield, constitute "*a will and the probate thereof.*" And that the certificate of the probate judge on page 22 of the record is a sufficient attestation.

Probate courts, under the constitution and laws of Michigan, are courts of record having general jurisdiction in all matters of probate, and all presumptions will aid their judicial action.

Church vs. Holcomb, 45 Mich., 29.
Alexander vs. Rice, 52 Mich., 451.

It appears fram this record that the trial of this cause took place at Marquette, Mich. It also appears from the probate of the will in question, shown on page 21 of the record, that Marquette is the place where the probate office is held.

If it was true that the probate court of Marquette county never acquired jurisdiction over the will of Edward C. Wilder, as is recited in the order admitting the will to probate, by reason of not having before it a duly authenticated record of its probate in New York state, evidence of that fact would have been ample to overthrow the *prima facie* case made by the plaintiff by the record from the office of the register of deeds. It was easy of access. This case has been twice tried. Is it conceivable that counsel for defendant would not have availed himself of so easy a method of overturning the plaintiff's case, if the records of the probate office disclosed a want of jurisdiction? We think the fact that defendant's counsel did not produce such probate records to show the want of jurisdiction is very conclusive that such records, if produced, would not have aided him.

We leave this branch of the case with the concluding remark that our position in regard to the construction of this statute, (How. St. 5822 *supra*) and in regard to what is meant by the probate of a will, seems to us most reasonable and as tending to the greater convenience, while securing equal safety to the public.

IV.

The fourth error is assigned upon the refusal of the court below to admit in evidence a record from the office of the register of deeds of an instrument called in the record a declaration of trust.

This record was properly excluded for several reasons, all of which are included under the general objection of immateriality.

1. No valid trust in land was declared by this instrument.

Uses and trusts concerning lands were abolished in Michigan, except as authorized and modified by the Revised Statutes of 1846. (Chapter 214 of Howell's Statutes.)

The deed of Oct. 29, 1855, from Wm. A. Pratt and wife to Manning & Wright was an absolute conveyance in fee. Although the purchase money for the lands was contributed in

part by Peck and Pratt, yet no trust resulted to them under the laws of Michigan. (How. St. 5569, *post.*)

Trask vs. Green, 9 Mich., 358.
Maynard vs. Hoskins, Ibid, 484.
Weare vs. Linnell, 29 Mich., 224.

The following provisions of the Michigan statutes govern the questions relating to this instrument (How. St. § 5563, 5564, 5565, 5566, 5567, 5568, 5569, 5570, 5571 and 5573):

5563. Uses and trusts, except as authorized and modified in this chapter, are abolished, and every estate and interest in lands shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided in this title.

5564. Every estate which is now held as an use, executed under the laws of this state as they formerly existed, is confirmed as a legal estate.

5565. Every person, who, by virtue of any grant, assignment, or devise, now is, or hereafter shall be, entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions as his beneficial interest.

5566. The last preceding section shall not divest the estate of any trustees, in any existing trust, where the title of such trustees is not merely nominal, but is connected with some power of actual disposition or management, in relation to the lands which are the subject of the trust.

5567. Every disposition of lands, whether by deed or devise, hereafter made, except as otherwise provided in this chapter, shall be directly to the person in whom the right to the possession and the profits shall be intended to be vested, and not to any other, to the use of, or in trust for, such person; and if made to one or more persons, in trust for, or

to the use of another, no estate or interest, legal or equitable, shall vest in the trustee.

5568. The preceding sections of this chapter shall not extend to trusts, arising or resulting by implication of law, nor be construed to prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

5569.—When a grant for a valuable consideration shall be made to one person, and the consideration thereof shall be paid by another, no use or trust shall result in favor of the person by whom such payment shall be made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of the next section.

5570.—Every such conveyance shall be presumed fraudulent, as against the creditors of the person paying the consideration; and when a fraudulent intent is not disproved, a trust shall result in favor of such creditors, to the extent that may be necessary to satisfy their just demands.

5571.—The preceding seventh (5569) section shall not extend to cases where the alienee named in the conveyance have shall taken the same as an absolute conveyance in his own name, without the knowledge or consent of the person paying the consideration, or when such alienee, in violation of some trust, shall have purchased the lands so conveyed, with moneys belonging to another person.

5572.—No implied or resulting trust shall be alleged or established to defeat or prejudice the title of a purchaser for a valuable consideration, and without notice of such trust.

5573.—Express trusts may be created for any or either of the following purposes:

1. To sell lands for the benefit of creditors.

2. To sell, mortgage or lease lands, for the benefit of legatees, or for the purpose of satisfying any charge thereon.

3. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in the last preceding chapter.

4. To receive the rents and profits of lands, and to accu-

mulate the same for the benefit of any married woman, or for either of the purposes and within the limits prescribed in the preceding chapter.

5. For the beneficial interest of any person or persons, when such trust is fully expressed and clearly defined upon the face of the instrument creating it, subject to the limitations as to the time prescribed in this title.

It will be seen by §5569 that resulting trusts, as between the parties, are abolished in Michigan. For that reason from Oct. 29 to Nov. 17, 1855, Manning and Wright held the title to the lands, free of any trust whatever, although during that time the facts existed which were on the 17th of November recited in the instrument of that date.

Did the written acknowledgment of these facts by Manning and Wright *create* a trust which before did not exist because unlawful?

It was not required by the statute of frauds that a resulting trust should be evidenced by any writing. It is more accurate to say such a trust *arose* than that it was *created*. To make a written declaration of the facts out of which a trust would *result*, was not to add anything to the validity of such a trust; it would only aid it by making it easier to prove.

It was not the purpose of our statute, (How. St. 5569,) to to require resulting trusts to be declared in writing, nor to preclude their enforcement if allowed to rest in parol, although some ill considered dicta of the Supreme Court of Michigan would seem to imply that.

Fisher vs. Fobes, 22 Mich., 454.
Bumpus vs. Bumpus, 53 Mich., 346.

The clear and unmistakable purpose of the statute was to forbid such trusts altogether. What difference would it make with the mischief which this statute was intended to prevent whether the trust rested on parol evidence, or on written evidence which the parties might keep secret until such time as they saw fit to assert it "in opposition to the written instruments of title which had been made with their consent and approval?"

If what otherwise would be a resulting trust, and therefore void, is rendered valid as a trust by a written declaration, it must be because the written declaration contains such matter as will declare a valid express trust. Let us see whether the instrument of Nov. 17 contains such matter.

It will be seen by § 5573, *supra*, that express trusts can be created only for certain specified purposes. The instrument of Nov. 17, 1855, obviously does not declare a trust for any of the purposes specified unless it be that in the 5th clause, which allows them to be created "5. For the *beneficial* interest of any person or persons, when such trust is *fully expressed* and *clearly defined* upon the face of the instrument declaring it."

That it does not come within this clause we think is almost equally clear.

1. Because the trust is not for the "*beneficial interest*" of any one.

The only interest sought to be subserved is one forbidden by the statute (How. St. 5569 *supra*). Manning and Wright were to hold the title to the lands as passive trustees. They were to perform no duty with reference to them for the benefit of Pratt or Peck. They had no power over them, even to use or manage them, without the expressed wish of a majority in interest. It was a naked trust, from which no one was expected to derive any benefit.

It may be that Pratt and Peck had reasons personal to themselves for not wishing to appear as the owners of these lands, but such an advantage is not such a "beneficial interest" as our statute recognizes as a basis for a valid trust, it is one, rather, which the statute forbids.

2. No trust is *declared* or *defined*. The purpose of our statute is to compel the real owners of land to retain the title in themselves, unless there be some good and substantial reason for having the title held by another. Passive trusts are not allowed.

This instrument discovers no other purpose than to have Manning and Wright hold the title to lands, which, in fact belonged to four persons.

Such a trust, if allowed, would be a common method adopted by dishonest debtors. The debtor would convey away his property, taking back a declaration of trust, which he could keep secret until such time as it was safe to enforce it.

In requiring a trust to be *fully expressed* and *clearly defined* the statute adopted a most effective method of preventing merely colorable trusts, not intended for any beneficial purposes, and trusts for immoral purposes, or such as the law treats as against public policy.

It was only by requiring such trusts to be "fully expressed and clearly defined" that the statute could ensure that certainty which has always been an essential element of a valid trust.

Wheeler vs. Smith, 9 How., 55.
Barnes Ex. vs. Barnes, 3 Cranch, 269.

If, therefore, the instrument of Nov. 17, 1855, did not, under the Michigan statutes declare a valid trust in lands, it did not in any manner affect the title to the land in controversy and it was properly excluded.

It does not follow that because this instrument was ineffectual to declare a trust concerning these lands, that it was without force for any purpose. The statutes before quoted

concerning uses and trusts relate only to trusts concerning lands. Trusts concerning personal property are not thus limited. It will be observed that the last paragraph of this instrument provides for a division of the proceeds and profits of these lands, between the shareholders. This was a valid provision and would constitute Manning and Wright trustees of such funds as should come into their hands from the sale of these lands.

It being possible then to give effect to this instrument as a declaration of trust concerning personal property, it is not necessary to stretch the statute to prevent a total failure of it.

2. But the instrument of Nov. 17, 1855, even if a valid declaration of trust, and therefore entitled to record as a conveyance, was properly excluded, because in the action of ejectment it was immaterial. If Manning and Wright took only as trustees, still they took the legal title, and could lawfully convey it, even although they did not conform to the terms and conditions of the trust. The grantee in a deed of bargain and sale takes the legal title, and if the grantor was a trustee, merely, the trust is thereby conveyed.

If a deed of bargain and sale be made by a trustee, the legal estate passes, whether the terms of the trust are complied with or not, for if the bargainee takes with notice, he himself stands as trustee in place of the bargainor. If, without notice and for valuable consideration, he takes an absolute title, for a trustee conveys by virtue of the legal estate vested in him, and not by virtue of a power.

Bank U. S. vs. Benning, 4 Cranch, C. C., 81.

If the instrument of Nov. 17, 1855, is valid at all as a declaration of trust, it must be because it was executed pursuant to an understanding had Oct. 29, 1855, when the deed from Pratt to Manning and Wright was executed. It was not possible for Manning and Wright, by their own instrument, to *create* a trust. They could only declare one before created by agreement of the parties. Such a trust, so created and declared, would be, if anything, an express trust. If it declared a valid express trust, the following Michigan statute applies (How. St. 5578):

5578. Every express trust, valid as such in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees in law and in equity, subject only to the execution of the trust; and the person for whose benefit the trust was created, shall take no estate or interest in the lands, but may enforce the performance of the trust in equity.

By this statute, if Manning and Wright were trustees they still had the legal title and could convey it. Mr. Wilder, by his deed, took the legal title, and if he had actual or constructive notice of the trust, he took it charged with the performance of it. Otherwise he took it free of the trust.

If there were an outstanding equity to some undivided portion of these lands, still, at most, the holder of such equity would be a tenant in common with the plaintiff, and the plaintiff would be entitled to the possession of the lands as against the defendant, who is a stranger to such title, and could bring ejectment.

Evarts vs. Beach, 31 Mich., 136.
Davis vs, Filer, 40 Mich., 316.

3. The instrument of Nov. 17, 1855, was immaterial for another reason. If it can be held to be a limitation upon the power of Manning and Wright to convey, except by the consent of a majority in interest, the conveyance to Wilder was by such consent, because Wilder had purchased an interest undivided from Pratt, a fact admitted in the record, (R. page 24, at the bottom,) and he and Manning and Wright constituted "a majority in interest."

V.

The errors assigned from the 5th to the 14th inclusive relate to different items of proof offered by plaintiff to show that certain illegal taxes had been raised by the authorities of Marquette county to pay JJ. Goodwin and Eddie an amount for salary as circuit judges, in violation of the Constitution and laws of the state. We think these assignments may properly be classed and argued together. We doubt if counsel will make any objection to any one of them, which will not apply equally to all. The plaintiff claimed that Marquette county had no authority to raise by tax any sum of money to be paid out on account of salaries of Circuit Judges, because they were fixed by the Constitution and payable by the state. The following provision of the Constitution applies:

Constitution, Article 9, Section 1. The Governor shall receive an annual salary of one thousand dollars; *the Judges of the Circuit Court shall each receive an annual salary of two thousand five hundred dollars;* the state treasurer shall receive an annual salary of one thousand dollars; the superintendent of public instruction shall receive an annual salary of one thousand dollars; the Secretary of Sta shall receive an annual salary of eight hundred dollars; the commissioner of the land office shall receive an annual salary of eight hundred dollars; the attorney general shall receive an annual salary of eight hundred dollars. They shall reseive no fees or perquisites whatever for the performance of any duties connected with their office. It shall not be competent for the legislature to increase the salaries herein provided.

In the face of this constitutional provision Marquette county supervisors voted every year a sum of money as additional compensation, first to Judge Goodwin in 1861 and to Judge Eddie in 1865, 1866 and 1867.

We need not take time to argue that these sums of money were not taxes but illegal exactions. If they were imposed by the authorities upon the property of the county in the form of taxes, any tax sales which included these illegal exactions would be void.

To show that this was done great strictness of proof is required under the Michigan statutes and practice in tax cases.

By the resolution appearing in the proceedings of the board of supervisors for the various years the plaintiff showed that the money was voted to pay the extra compensation to the Judges. Perhaps this was sufficient to raise the presumption that the money was raised. But if so, it could do no harm to prove by Mr. Maynard and Mr. Healy the fact that these items were actually included among the items going to make up the county tax. When a sum of money is voted in gross, without specifying the purpose for which it is raised it may be shown *dehors* the record that it was in fact raised in part for an illegal purpose.

Fay vs. Wood, 32d N. W. R. 614, 619.

As tending to show that the money paid to Judge Eddie was actually raised in 1865, proof was offered as to the condition of the funds in the county treasury on January 1, 1866, from which it appeared that there was only $5.23 on hand. (R. p. 29.) If this was true the money to pay Judge Eddie in 1866 had to come from the taxes raised in 1865.

The testimony of the County Clerk as to the manner of paying money out of the treasury on warrants drawn by the Clerk; the book of stubs of warrants drawn, the evidence tending to show that the warrants drawn to Judges Goodwin and Eddie were paid out of the contingent fund, all of this was competent and pertinent testimony tending to show that the money so illegally voted and raised was actually paid out.

We confess our inability to understand upon what grounds the objections to such testimony can be put. The record shows the testimony was objected to as irrelevant. Such an objection, if it has any force, must rest on the idea that the raising of the money to pay extra compensation to the Circuit Judges would not avoid a tax sale for a sum in which it was included.

That a tax sale of lands for a sum which includes an illegal item of any considerable amount is void is sustained by a long line of decisions from the Supreme Court of Michigan. Among the cases we cite the following:

Lacey vs. Davis, 4 Mich., 140.
Case vs. Dean, 16 Mich., 12.
Edwards vs. Talliaferro, 34 Mich., 13.
Hammontree vs. Lott, 40 Mich., 195.
Sillsby vs. Stockle, 44 Mich., 561.

One item of testimony in this chain of evidence was objected to with the rest as irrelevant, and on the further ground that if the fact sought to be proved was material the kind of proof offered was not competent.

For the purpose of showing that the money raised as extra compensation to the Judges was actually paid to them, the plaintiff called the County Clerk, who testified that the sys-

tem adopted for drawing money from the county was by warrants drawn on the county treasury. That the County Clerk keeps a record of such warrants upon stubs showing the number, amount, date, name of payee and purpose for which they were drawn. That a journal is kept, but that is written up from the stubs. He produced a book of stubs from his office, purporting to be a book of stubs of warrants drawn in 1865, 1866, 1867 and 1868.

Stubs from the stub book so produced were then offered and received in evidence for the purpose of showing that warrants for various amounts had been drawn to C. E. Eddie for services as Judge.

This evidence was objected to as immaterial and incompetent. We shall take no more time in discussing whether it was material. If it was not material it was because it was sufficient to show that the money was raised without showing that it was paid out. But in that view the testimony was harmless. As to its competency we say: They were books of original entries, kept by the clerk for the express purpose of preserving a record of warrants drawn by him on the County Treasurer.

"The fact that no statute distinctly requires such a book to be kept does not exclude it. The duties of the office could not be adequately performed without the clerks keeping a record of such transactions, and that record, if kept, must be considered as an official book, receivable in evidence on that basis."

Grossbeck vs. Seeley, 13 Mich., 341.

As funds could only be paid out of the treasury upon warrants, the first step in the order of proof was to show that warrants were drawn. There was no better evidence of that than these stub books. It was, in fact, the only record, unless it be the warrants themselves, and if they were in existence they would be no better or higher order of proof.

VI.

The errors assigned in the 14th and 15th assignments may be considered together. It is claimed there was no evidence to show that any part of the money voted and raised to pay the extra compensation to the Judges was apportioned to the specific descriptions of land in suit.

In reply to this we say:

1. It was not necessary to make proof of that specific fact. When it was shown that the money was voted and apportioned to the respective townships, and that it was collected and paid out, the presumption would be that the amount was spread upon all the lands alike. It would be the duty of the assessor to so spread all taxes ratably and it will be presumed he did so.

To obviate the effect of the statute making tax deeds *prima facie* evidence of the regularity of all proceedings such evidence must be produced by the party objecting as will exclude any reasonable presumption of regularity. There must be such evidence of irregularity as well require explanation. When this is done the burden of proof is shifted to the holder of the tax deed.

Lacy vs. Davis, 4th Mich., pp. 157 and 158.
Case vs. Dean, 16 Mich., p. 37.
Blackwell on Tax Titles, 83 note and cases cited.

2. But the evidence is all in the record to show that a ratable portion of this illegal exaction was assessed against these lands. By reference to p. 32 of the record it will be seen that counsel for plaintiff put in evidence the records of the proceedings of the board of supervisors for Marquette County for the years 1861, 1865, 1866 and 1867, relating to the equalization of the assessment rolls of the several townships and the voting and and apportionment of the state and county taxes.

An examination of the proceedings will show the following facts in regard to the equalization of the assessment rolls and the apportionment of the county taxes for each year.

1861.

The property in Marquette township was assessed and equalized without change from the assessed valuation at $624,172.99. The county taxes were voted at six and one-half mills on the dollar. The amount apportioned to Marquette was $4,056.43, which was .0065 on the dollar.

The table on page 43 of record shows the valuation of each tract of the lands in question and the amount of county taxes assessed against each. An easy computation will show it to be exactly .0065 on the dollar. The table on page 42 shows that the lands were advertised for sale for the same amount, with interest and charges added, and the table on page 44 shows they were sold for the same.

1865.

On page 34 of the record it appears that the property of Marquette township was assessed at $713,625.00. This valuation was reduced by deducting from the valuation of the real estate, $100,000.00, leaving the equalized valuation $613,625.00. Upon this equalized valuation a county tax of one per cent was voted and apportioned to each township. (R. p. 35.)

The table on page 46 shows the valuation of each tract of the lands in question, and the amount of county tax assessed against each. It is easy to see it is not exactly one per cent.

The reason for this is that the county tax of $6,136.25, apportioned upon a valuation of $613,625, is actually spread by the supervisor upon a valuation of $100,000 more, or $713,625; one per cent on $713,625 would raise more county tax than was apportioned. So the supervisor reduces the rate per cent from 1 per cent to such a fraction thereof as will, if spread equally upon the total assessed valuation of his township produce the required amount. A computation will show the required rate per cent to be .0086, and this was the exact rate per cent assessed against the lands in question for county taxes in 1865. The table on page 45 shows that these lands were advertised for sale for the same amount with interest and charges added, and the table on page 47 shows that they were sold for the same amounts.

1866.

On page 35 of the record it appears that the assessment roll of the township of Marquette was left unchanged by the board of supervisors at a valuation of $516,425. That the total equalized valuation of the county was $1,128,794. On page 36 it appears that a county tax was voted amounting to $22,575.88, which was two per cent on the equalized valuation of the county, and the same per cent was apportioned to the township of Marquette.

The table on page 50 shows the valuation of each tract, and that the county tax assessed against each was two per cent. The table on page 49 shows that the lands were advertised for sale for the same amounts with interest and charges added, and the table on page 51 shows they were sold for the same amounts.

1867.

On page 37 of the record it appears that the assessment rolls of the various townships were equalized, as made by the supervisors without additions or deductions, the aggregate valuation of the county being $1,850,227.50.

The valuation of the township of Marquette was $636,377.50. On page 38 it appears that a county tax was voted of $9,000.

A computation will show that the county tax should have been .00486 on the dollar, whereas over .0056 on the dollar was actually apportioned to Marquette township, making an excess of $507.21. The table on page 54 of the record shows the valuation of each tract and that the county tax assessed against each, was over .0056 on the dollar, from which it appears that the excess in the county tax apportioned to Marquette township was levied upon the lands.

The table on page 53 shows that the lands were advertised for sale for the same amount with the interest and charges added, and the table on page 55 shows that they were sold for the same amounts.

It will be seen from the foregoing that all the facts were before the jury, from which it appeared that "a particular sum was apportioned to particular descriptions or pieces of this land larger than would have been but for the raising of the three hundred dollars and four hundred dollars unlawfully." There was no testimony tending to contradict this evidence, and the refusal of the Court to instruct the jury "that there was no evidence upon the points referred to" was not error.

By reference to page 38 of the record it will appear that counsel for plaintiff undertook to make proof of certain computations made by him to show excess in the state and county taxes apportioned to the township of Marquette in 1867, and that the same was objected to by defendants' counsel as incompetent. But upon its being stated that the computations testified to could be verified by the records in evidence the objection was not pressed.

It was the purpose of plaintiff's counsel to make proof of all these various computations. Not because he believed it essential to his case, but for the convenience of the court and jury, as in an action on a promissory note he might make proof of a computation of the amount of interest due. But upon objection being made it was deemed unnecessary to proceed further with it.

When the facts are all in evidence undisputed, and nothing

remains except to make a computation, the Court may make it and instruct the jury what it is, or may permit the jury to make it for themselves. The law treats that as certain, which, from data proven or admitted, is capable of being made certain.

In *Case vs. Dean, 16 Mich., 12*, the question was as to whether there had been an erroneous footing of an assessment roll. Upon that point the Court said on page 24:

"Proof by witnesses of what were the true footings of the assessment rolls were quite immaterial, as the rolls were in evidence, and it was competent for the jury to foot them for themselves, and to avail themselves of any material fact which might appear upon them."

In *Hubbard vs. Winsor, 15 Mich., 146*, the question was whether the voting of a tax by a percentage, instead of fixing a specific sum was valid, and upon that the Court said, p. 154:

"The designation of a percentage on a definite sum is just as certain as if it was calculated and stated in figures, and leaves nothing to be done to make it known except a simple computation. It would be absurd to hold a tax valid or void according as a sum of this nature is done by one officer or another from the same data. The law presumes that the rules of arithmetic are the same in all offices."

The Court in his charge instructed the jury that they must find whether the sums claimed to have been voted to the judges "constituted an item to make up the amount of tax raised during those years, *that was actually levied*."

Again:

"Were these sums in pursuance of the resolution that has been introduced, *levied as a tax* and for the purpose as claimed by the plaintiff of paying salaries to these judges."

"You are to say from the evidence, and mainly from the evidence of Mr. Healy and Mr. Maynard, whether such sums for additional salary were annually, during the years that have been mentioned, *actually included in the taxes levied*."

If the jury found under the charge of the court that these sums were "actually included in the taxes levied" upon the

county at large, it would have been error for them to find no portion of such sums were actually levied upon these lands, because the undisputed record evidence in the case showed that in every year except in 1867, the same percentage of county taxes was assessed against these lands that was apportioned upon the county at large, and that in 1867 a greater percentage was levied.

We say, therefore, in conclusion, that there is no error apparent upon this record, and that the judgment below should be affirmed.

EDWARD CAHILL,
Of Counsel for Def't in Error.

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SUPREME COURT OF THE UNITED STATES.

WILLIAM C. CULBERTSON,

Plaintiff in Error,

vs.

THE H. WITBECK COMPANY,

Defendant in Error.

In Error to the Circuit Court of the United States for the Western District of Michigan.

Brief and Argument of B. J. Brown, for Defendant in Error.

J. W. STONE, with whom is
D. H. BALL,
For Plaintiff in Error.

B. J. BROWN, with whom is
EDWARD CAHILL,
For Defendant in Error.

MILWAUKEE, WIS.:
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1888.

SUPREME COURT OF THE UNITED STATES.

WILLIAM C. CULBERTSON,
Plaintiff in Error,

vs.

THE H. WITBECK COMPANY,
Defendant in Error.

Brief of B. J. Brown for Defendant in Error.

I.

The first error is assigned upon the admission in evidence of the record of deed from William Pratt and wife to Manning & Wright against the objection that said deed, as appears by said record, had but one subscribing witness as to the grantor, William A. Pratt.

Ebenezer Warner, the justice of the peace before whom Pratt acknowledged his deed, certifies "that I know the person who made the said acknowledgment to be the individual described in and who executed the within instrument."

He could only know this by having witnessed the signing and the language of the certificate must be taken in its obvious import.

Munroe *vs.* Eastman, 31 Mich., at page 285.

The deed and the certificate of acknowledgment bear the same date, and the Ebenezer Warner, who, as justice of the peace, took the acknowledgment of Pratt will be presumed to be the same person, who, without official designation, signed the deed as a subscribing witness.

Carpenter *vs.* Dexter, 8 Wall., 513.

Upon the face of the record it would appear that Walsh and Warner witnessed the signatures of both Pratt and his wife. It is consistent with the limited attestation of Walsh at his first signing that he may afterwards have united with Warner in attesting the deed generally.

Watson *vs.* Peters, 26 Mich., at pages 512–13.

It is the policy of the law not to suffer conveyances or the proof of them to be defeated by technical or unsubstantial objections.

Carpenter *vs.* Dexter, *Supra*; cited and approved in Morse *vs.* Hewitt, 28 Mich., at page 485.

II

The second error is assigned upon the admission in evidence of a deed from Still Manning and William Wright to Edward C. Wilder, objected to for the reason that it does not appear from the certificate that the persons acknowledging were the same persons as those named as grantees in said deed.

If the certificate of acknowledgment stood alone and the deed had been entitled to record in Michigan without further authentication this Court might look into the laws of New Jersey in passing upon its validity. Carpenter *vs.* Dexter, *Supra*. But the authenticating certificate required by Section 5660, Howell's Statutes, pages 4 and 5 of the brief

of my associate, which here accompanies the certificate of acknowledgment, forecloses any inquiry into its form or sufficiency. The statute invites and gives full efficacy to the certificate of authentication. If, in a case where fraud is not alleged, the certificate of the officers to whom this statute, in effect, confides the duty of passing upon the matters to be certified to, is not conclusive then there could be no safe reliance upon the record of a deed executed beyond the limits of the state.

III.

The third error is assigned upon the admission in evidence of the record in the office of the Register of Deeds, of Marquette County, of an attested copy of the will of Edward C. Wilder, and of the probate thereof, against the objection that said record contained no proof that the probate court, of the County of Marquette, obtained jurisdiction to make the order admitting said will to probate and that it contains no record of any authentication or probate by any foreign Court or officer.

The attention of the Court is invited to the following sections of Howell's Statutes in addition to those set forth in the brief of my associate:

5805. All wills which shall have been duly proved and allowed in any other of the United States, or in any foreign country or state, according to the laws of such state or country may be allowed, filed and recorded in the probate court of any county in which the testator shall have real or personal estate on which such will may operate in the manner mentioned in the following sections.

5806. When a copy of such will, and the probate thereof, duly authenticated, shall be produced by the executor or

other person intrusted in such will, to the probate court, such court shall appoint a time and place of hearing, and notice shall be given in the same manner as in the case of an original will presented for probate.

5807. If, on hearing the case, it shall appear to the Court that the instrument ought to be allowed in this state as the last will and testament of the deceased, the copy shall be filed and recorded, *and the will shall have the same force and effect as if it had been originally proved and allowed in the same Court.*

5821. Every will, when proved as provided in this chapter, shall have the certificate of such proof endorsed thereon or annexed thereto, signed by the judge of probate and attested by his seal, and every will so certified, and the record thereof, or a transcript of such record certified by the judge of probate and attested by his seal, may be read in evidence in all courts within this state, without further proof.

5822. *Am. 1875, p. 183, Apr. 29, Aug. 3, Act 153.* An attested copy of every will devising lands, or any interest in lands, and of the probate thereof, shall be recorded in the office of the Register of Deeds of the county in which the lands thereby devised are situated; and it shall be the duty of the judge of probate to cause such registration to be made, and the expense thereof shall be a charge against the estate, and shall be paid in the same manner as other expenses of administration are.

As shown by the notes of the compiler this section was enacted April 29, 1875, and went into effect August 3, 1875.

7504. Copies of all papers, records, entries and documents, required by law to be filed by any public officer in his office, or to be entered or recorded therein, and duly filed, entered or recorded according to law, certified by such

officer to be a true transcript compared by him with the original in his office, shall be evidence in all courts and proceedings, in like manner as the original would be if produced.

It is to be observed in the first place that the objection here was not to the mode or vehicle of proof, but to the legal effect of the proof itself.

The defendant below having thus specified his objection, it must be considered that all others were waived or that there was no ground upon which others could stand.

Evanson *vs.* Gunn, 99 U. S., 660.

But the copy of the record being admissible in evidence *a fortiori* the original record would be admissible and so it is ruled.

Bruce *vs.* Manchester & Keene Railroad, 19 Fed. Rep., 342

It is further to be said in this connection that the statute requires a copy of the will and of the probate thereof to be recorded in every county where lands devised may be situated. That may include counties other than the county of probate. And it was the object of the legislature by Section 5822 to make such record in the Register's office of any county where any portion of the lands thereby devised are situated evidence of the devolution of the title.

Coming then to the first branch of the objection: Does enough appear on the face of the decree of the probate court to show jurisdiction?

The decree upon its face shows:

First. That it relates to the will of Edward C. Wilder, who was at the date of his death a resident of the city of New York, in the state of New York.

Second. That a copy of such will and the probate thereof,

duly authenticated, was produced to the probate court with a petition for its allowance.

Third. That such "probate thereof" was the probate of the surrogate's court in the city and county of New York, in the state of New York.

Fourth. That due notice of hearing was given according to law.

Fifth. That upon a full hearing *upon said petition* and on examination of the proofs *and allegations* of the petition it satisfactorily appeared to the Court that said deceased was at the time of his death a resident of the city of New York, in the state of New York, and died leaving his last will and testament, which was duly approved and allowed in the surrogate court for and of the county of New York, in the state of New York, according to the laws thereof, and that he was possessed of estate situate in said county of Marquette on which said will operates * * and that said copy of said will ought to be allowed in this state as the last will and testament of said deceased, and

Sixth. That it was thereupon ordered, adjudged and declared by this Court, that said copy of said last will and testament of said deceased be allowed, filed and recorded in this Court and that the same shall have full force and effect in this state as such will agreeably to the statute in such case made and provided.

Seventh. That administration of the estate was granted to Sophia Wilder, executrix and sole devisee in the will named.

"The probate courts of this state are courts of general, and for the most part exclusive, jurisdiction in probate matters; and their orders and decrees are not to be collaterally attacked on any assumption that they may have exercised their jurisdiction *without evidence to support the allegations.*"

Morford *vs.* Dieffenbacker, 54 Mich., at page 605.

In Pope *vs.* Cutler, 34 Mich., at page 152, the supreme court, of Michigan, says: "But there was no evidence that the paper allowed in Lenawee County was accompanied by any foreign probate or foreign authentication to accredit it for probate here."

Again, in Wilt *vs.* Cutler, 38 Mich., at pages 196–7, the supreme court, of Michigan, further says: "The question as to what was necessary to give the probate court jurisdiction came up under this same will in Pope *vs.* Cutler, 34 Mich., 152, and it was there held a copy of the foreign will and the probate thereof duly authenticated must be presented to the probate court in this state to give it jurisdiction. In that case there was no evidence that the paper allowed in Lenawee County was accompanied by any foreign probate or authentication to entitle it to credit of this state."

Here the facts necessary to give jurisdiction appear upon the face of the decree and its recitals are conclusive.

Grignon's lessee *vs.* Astor, 2 How., at pages 337 *et seq.*, and cases there cited.

Passing to the second branch of the objection.

In the case of Wilt *vs.* Cutler, *supra*, "it was claimed first, that there was no copy of the probate of the will in New Jersey," p. 196. This claim appears to have been made upon a full exibition of the records in the probate court of Lenawee County affecting the will there drawn in question. The Court says at page 197: "In this case there appears by the certificate of the surrogate of Morris County, New Jersey, a copy of the last will and testament of Frederick W. Walker, and the proofs thereof, and the letters granted and issued thereon, as transcribed from the original record thereof in this office. The objection is that none of these nor all together constitute the probate of the will; that

there should be another distinct separate judicial act or decree as the judgment of the court establishing the will.

"Technical or unsubstantial objections should not be permitted to defeat such instruments, and unless we can find in the statutes of the State of New Jersey a clear and express provision requiring such judgment or decree in addition to what appears in this case, then it would be our duty to consider the evidence of the probate of the will in that state as sufficient."

The Court then adverts to the statutes of New Jersey and proceeds to say: "The statutes of New Jersey do not in express terms require any distinct order, judgment or decree establishing the will, and they seem to treat and consider the recording of the will, with the proof thereof and the letters issued thereon, as the probate of the same. All these provisions and requirements have been fully observed and complied with in this case. We are of opinion, therefore, that this will was duly proved and allowed according to the laws of the state of New Jersey."

Here was a judicial question within the power of the probate court "to hear and determine" which is jurisdiction, and a question over which it would seem to have had exclusive jurisdiction saving the right of appeal. Now, if it had appeared from a decree of the probate court of Lenawee county that it had passed upon this question would it have remained open for collateral inquiry in supreme court.

What is meant by the words "and of the probate thereof" in Sec. 5822 *supra*? Does it not relate solely to the probate in Michigan? Does it contemplate that a bundle of papers, as in the case of Wilt *vs.* Cutler, not being a foreign decree, but what the local court may hold to be the evidence of such decree, shall be so recorded with a copy of the will, or does

not rather the finding of this jurisdictional fact by the local Court satisfy the statute? Why should this evidence of the fact appear any more than the evidence of jurisdiction of the *rem* by a full disclosure of the evidence of publication?

Again, recurring to Sec. 5807, Howells Statutes, "if, on hearing the case, it shall appear to the Court that the instrument ought to be allowed in this state, as the last will and testament of the deceased, the copy shall be filed and recorded, and the will shall have this same force and effect as if it had been originally proved and allowed in the same court."

What is the significance of the words "ought to be allowed in this state" as bearing upon the jurisdiction of the probate court?

Mark the last clause, "and *the will* shall have the same force and effect as if it had been originally proved and allowed in the same court."

The language "a certificate of such proof." Sec. 5821, Howell's Statutes, is the verbal equivalent of "of the probate thereof" in Sec. 5822. So the phrase "attested by his seal," Sec. 5821, means precisely the same thing as "an attested copy," Sec. 5822.

Upon the other questions arising upon the record I adopt the brief of my associate.

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